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DIGEST **OF** **INSURANCE CASES** EMBRACING ALL DECISIONS

In any Manner Affecting Insurance Companies or their Contracts upon Whatever Plan or for Whatever Purpose their Business may be Conducted, Covering all United States Courts, namely the United States Supreme Court, the United States Circuit Courts of Appeal, and United States Circuit and District Courts—All Courts of Last Resort and other Appellate Courts of the various States and Territories and District of Columbia—All the Highest Judicial Tribunals of all other English-Speaking Countries and all Inferior Courts within the foregoing Jurisdictions Whose Decisions are Reported—Also Reference to All Annotations and Leading Articles on Insurance in all Law Journals Published in the English Language

VOL. XXXIII
FOR THE YEAR ENDING OCTOBER 31, 1920

By GUILFORD A. DEITCH
OF THE INDIANAPOLIS BAR

ASSISTED BY
RUSSELL CONWELL FISH
OF THE INDIANAPOLIS BAR

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MAR 9 1942
to Mutual Life Ins Co

PREFACE

This volume completes the thirty-third year of the "Insurance Digest." It contains 645 pages together with citations from many leading articles and references to annotations, relating to insurance, appearing in the reports and law periodicals published during the year ending October 31, 1920. The cases are classified as follows:

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The cases reported, as well as the articles and annotations, are indexed and cross-indexed under proper headings and are localized by reference to the state in which the particular decision was made.

I express my obligation to Mr. Russell Conwell Fish, of the Indianapolis Bar for assistance in the preparation of this volume.

GUILFORD A. DEITCH.

Indianapolis, Indiana, July 1, 1921.

EXPLANATION OF ABBREVIATIONS USED IN THIS VOLUME

OFFICIAL COURT REPORTS

See page vii for abbreviations of "Unofficial reports and Law Periodicals"

Ala.	Alabama Supreme Court Reports.
App. D. C.	District of Columbia Court of Appeals Reports.
*App. Div.	New York Supreme Court, Appellate Division.
Ark.	Arkansas Supreme Court Reports.
Cal.	California Supreme Court Reports.
Can. S. C.	Canadian Supreme Court Reports.
Civ. Pro.	New York Civil Procedure Reports.
Col.	Colorado Supreme Court Reports.
Col. App.	Colorado Court of Appeals Reports.
Conn.	Connecticut Supreme Court of Errors, Reports.
Del. Ch.	Delaware Chancery Reports.
Dick	New Jersey Equity Reports.
Fla.	Florida Supreme Court Reports.
Ga.	Georgia Supreme Court Reports.
Houst.	Houston (Delaware Superior Court and Court of Errors and Appeals).
Ill.	Illinois Supreme Court Reports.
Ill. App.	Illinois Appellate Court Reports.
Ind.	Indiana Supreme Court of Judicature Reports.
Ind. App.	Indiana Appellate Court Reports.
Ia.	Iowa Supreme Court Reports.
Kan.	Kansas Supreme Court Reports.
Kan. App.	Kansas Court of Appeals Reports.
Ky.	Kentucky Court of Appeals Reports.
La. Ann.	Louisiana Supreme Court Reports.
Mass.	Massachusetts Supreme Judicial Court Reports.
Md.	Maryland Court of Appeals Reports.
Me.	Maine Supreme Judicial Court Reports.
Mich.	Michigan Supreme Court Reports.
Minn.	Minnesota Supreme Court Reports.
Misc.	New York Miscellaneous Reports.
Miss.	Mississippi Supreme Court Reports.
Mo.	Missouri Supreme Court Reports.
Mo. App.	Missouri Court of Appeals Reports.
Mont.	Montana Supreme Court Reports.
N. B.	New Brunswick Reports.
N. B. Eq.	New Brunswick Equity Reports.
N. C.	North Carolina Supreme Court Reports.
N. D.	North Dakota Supreme Court Reports.
N. H.	New Hampshire Supreme Court Reports.
N. J. Eq.	New Jersey Equity Reports.
N. J. L.	New Jersey Law Reports.
N. S.	Nova Scotia Reports.
N. Y.	New York Court of Appeals Reports.
Neb.	Nebraska Supreme Court Reports.
Ohio St.	Ohio Supreme Court Reports.
Ont.	Ontario Reports.
Ont. App.	Ontario Appeal Reports.
Ore.	Oregon Supreme Court Reports.

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Pa.	Pennsylvania Supreme Court Reports.
Rap. Jud. Quebec B.R.	Rapports Judiciaires De Quebec; Cour du Banc de al Rine.
Rap. Jud. Quebec, C.S.	Rapports Judiciaires De Quebec; Cour Superieure.
R. I.	Rhode Island Supreme Court Reports.
S. C.	South Carolina Supreme Court Reports.
S. D.	South Dakota Supreme Court Reports.
Tenn.	Tennessee Supreme Court Reports.
Tex.	Texas Supreme Court Reports.
Tex. C. C. A.	Texas Court of Civil Appeals Reports.
U. S.	United States Supreme Court Reports.
U. S. App.	United States Circuit Courts of Appeals Reports.
Utah	Utah Supreme Court Reports.
Va.	Virginia Supreme Court of Appeals Reports.
Vt.	Vermont Supreme Court Reports.
W. Va.	West Virginia Supreme Court of Appeals Reports.
Wash.	Washington Supreme Court Reports.
Wis.	Wisconsin Supreme Court Reports.

EXPLANATION OF ABBREVIATIONS USED IN THIS VOLUME

UNOFFICIAL REPORTS AND LAW PERIODICALS

See preceding pages for abbreviations of "Official Reports"

Adv. S. U. S.....	Advance Sheets United States Supreme Court; Lawyers' Co-Operative Pub. Co., Rochester, N. Y.
Alb. L. J.....	Albany Law Journal, Albany, N. Y.
Am. L. Reg.....	American Law Register; Philadelphia.
Am. L. Rev.....	American Law Review; St. Louis, Mo.
Am. St. R.....	American State Reports.
Am. & Eng. Corp. Cas.	American and English Corporation Cases.
[1920] A. C.	Appeal Cases [1920] "The Law Reports," London, England.
Atl.	Atlantic Reporter; West Publishing Co., St. Paul, Minn.
Austral. L. T.....	Australian Law Times; Melbourne and Adelaide, Australia.
C. C. A.....	United States Circuit Courts of Appeals Reports; Lawyers' Co-Operative Pub. Co., Rochester, N. Y.
Can. L. T.....	Canadian Law Times; Toronto, Ont., Canada.
Cent. L. J.....	Central Law Journal; St. Louis, Mo.
[1920] Ch. D.....	Chancery Division [1920] "The Law Reports," London, England.
Ch. L. J. Wkly.....	Chicago Law Journal, Weekly; Chicago, Ill.
Ch. L. N.....	Chicago Legal News, Chicago, Ill.
Dauphin Co. R.....	Dauphin County Reporter; Harrisburg, Pa.
Del. Co. Rep.....	Delaware County Reporter; Chester, Pa.
Det. L. N.....	Detroit Legal News, Detroit, Mich.
Fed.	Federal Reporter; West Publishing Co., St. Paul, Minn.
Green Bag, The.....	Boston, Mass.
Harv. L. R.....	Harvard Law Review; Cambridge, Mass.
Ill. L. R.....	Illinois Law Review, Northwestern University, Chicago.
Ins. L. J.....	Insurance Law Journal; New York, N. Y.
[1920] K. B.....	King's Bench Division [1920] "The Law Reports"; London, England.
Ky. L. R.....	Kentucky Law Reporter; Frankfort, Ky.
L. J. Ch. N. S.....	Chancery Division
L. J. P. C. N. S.....	Privy Council
L. J. P. D. & A. N. S.	Probate Division and Appeal
L. J. Q. B. N. S.....	Queen's Bench Division
L. R. A.....	Lawyers' Reports, Annotated; Lawyers' Co-Operative Pub. Co., Rochester, N. Y.
Lack. L. N.....	Lackawanna Legal News; Lackawanna, Pa.
Lanc. L. R.....	Lancaster Law Review; Lancaster, Pa.
Law T. R.....	Law Times Reports; London, England.
Leg. Int.	The Legal Intelligencer; Philadelphia, Pa.
Mo. App. R.....	Missouri Appeal Reporter; Kansas City Mo.
Mont. Co. L. R.....	Montgomery County Law Reporter; Norristown, Pa.
N. C. R.....	National Corporation Reporter; Chicago, Ill.
N. E.	Northeastern Reporter; West Publishing Co., St. Paul, Minn.
N. J. L. J.....	New Jersey Law Journal, Plainfield, N. J.

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N. W.	Northwestern Reporter; West Publishing Co., St. Paul, Minn.
N. W. L. R.	Northwestern Law Review, Chicago, Ill.
N. Y. Supp.	New York Supplement; West Publishing Co., St. Paul, Minn.
Neb. L. N.	Nebraska Legal News; Lincoln, Neb.
North. Co. Rep.	Northampton County Reporter; Easton, Pa.
O. C. R.	Ohio Circuit Reports; Columbus and Cincinnati, O.
O. D.	Ohio Decisions; Norwalk, O.
O. F. D.	Ohio Federal Decisions; Norwalk, O.
O. L. J.	Ohio Law Journal; Columbus, O.
O. L. N.	Ohio Legal News; Norwalk, O.
O. N. P.	Ohio Nisi Prius Decisions; Columbus and Cincinnati, O.
[1920] P.	Probate Division "The Law Reports"; London, England.
Pa. Co. Ct.	Pennsylvania County Court Reports; Philadelphia, Pa.
Pa. Dist. R.	Pennsylvania District Court Reports; Philadelphia, Pa.
Pa. Super. Ct.	Pennsylvania Superior Court Reports; Philadelphia, Pa.
Pac.	Pacific Reporter; West Pub. Co., St. Paul, Minn.
[1920] Q. B. D.	Queen's Bench Division [1920] "The Law Reports"; London, Eng.
Pitts. L. J.	Pittsburgh Legal News; Pittsburgh, Pa.
S.	Southern Reporter; West Publishing Co., St. Paul, Minn.
S. C. R.	United States Supreme Court Reporter; West Publishing Co., St. Paul, Minn.
S. E.	Southeastern Reporter; West Publishing Co., St. Paul, Minn.
Sc. L. R.	Scottish Law Reporter; Edinburgh, Scotland.
Sc. L. T.	Scots Law Times, Edinburgh, Scotland.
Super. & C. P.	Ohio Superior and Common Pleas Courts Reporter; Norwalk, O.
S. W.	Southwestern Reporter; West Publishing Co., St. Paul, Minn.
Va. L. Reg.	Virginia Law Register; Lynchburg, Va.
Va. S. C. R.	Virginia Supreme Court Reporter; Richmond, Va.
Wash. L. R.	Washington Law Reporter; Washington, D. C.
Wk. L. B.	Weekly Law Bulletin and Ohio Law Journal; Columbus, O.
W. N. C.	Weekly Notes of Cases; Philadelphia, Pa.
Yale L. J.	Yale Law Journal; Box 1341, New Haven, Conn.

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FIRE INSURANCE

Action on Policy—Practice—Burden of Proof—Statute:

Under Civ. Code Prac. Art. 526, relative to burden of proof, where in an action on a fire insurance policy the insurer denied liability because of vacancy of building insured at the time it burned, and the plaintiff pleaded waiver of the insurer's vacancy clause of the policy, the burden of proof was upon plaintiff.

Same—Vacancy Clause—Waiver—Sufficiency of Evidence:

In an action on a fire insurance policy defended on the ground that the insured building was vacant at the time it burned, in violation of the policy, evidence of insurer's agent's statements to insured was sufficient to show waiver.

Same—Same—Same:

A vacancy clause in the fire insurance policy can be waived by the statements of the insurer's agent, and there was such a waiver where the soliciting agent stated to the insured that a vacancy permit was unnecessary to avoid a breach of the vacancy provision in the policy, and that it would be sufficient for insured to leave some furniture in the building.

[Judgment for plaintiff below. Here affirmed against company.]

North River Ins. Company v. Rawls (Ky. C. A.):

214 Southwestern Reporter (November 5, 1919) 925.

Fire Insurance—Other Insurance—Attempt to Default:

Where a fire insurance policy permitted other insurance without notice, insured did not violate the policy by taking another policy with another insurer. The second policy provided that it should be void if insured had any other insurance. *Held*, That the second policy never became enforceable, and the statement of the insured in his proof of loss that the first policy was the only insurance was true in effect and the policy was not voided.

[Judgment in accordance with opinion.]

Keoski v. Springfield Fire & Marine Ins. Co. (Mass. S. C.):

124 Northeastern Reporter (November 11, 1919) 476.

Fire Insurance—Cause of Loss—Sufficiency of Evidence:

In an action on a fire insurance policy for damage to a silo there was sufficient evidence to show that the damage to the silo was not caused by the generator or explosion of gas vapor, but by fire.

Fire Insurance—Increase of Risk—Evidence:

Where a fire policy provided that it should be void "if the hazard be increased by any means within the knowledge of insured," the building of a fire within a silo in the center of the concrete floor did not invalidate the policy, as the provision had no reference to mere temporary acts of negligence or to ordinary acts of ownership.

Action on Policy—Defense—Negligence:

The rule that mere frauds or negligence of the insured, unaffected by any fraud or design, did not constitute a defense to an action on an insurance policy, is well settled, but such rule will not excuse extreme reckless and inexcusable negligence on the part of the insured, the consequence of which must have been palpably obvious to him at the time.

[Judgment for company below. Here reversed against company.]

Nash v. American Ins. Company (Ia. S. C.):

174 Northwestern Reporter (November 21, 1919) 378.

Voluntary Associations—Suit against Individual Members:

A voluntary association, being only a collection of individuals, could not at common law, sue or be sued by its associated name, and, in the absence of an enabling act, suits against such associations should be brought against individual members.

Same—Same:

In an action on a fire policy, assured being a voluntary unincorporated association, organized for the purpose of exchanging reciprocal or interinsurance contracts, action could be brought against the association in its associated name, was not required to be brought against the individual members, in view of Section 1, 2, 3, 5, and 6, and Section 4 of Acts 1915, page 610, providing for service upon insurance commissioners in action on the associated policies.

Same—Same—Suit in Associated Name:

Where policy issued by voluntary unincorporated association provided that judgment in action against any of its members should be conclusive as to liability of other members, did not preclude policyholders from suing association in its associated name.

Insurance—Regulation—Police Power:

The state, in the exercise of its police power, may fully and completely regulate the business of insurance.

Insurance—Contract—Constitutional Law—Police Power:

Acts 1915, p. 610, prescribing conditions under which persons or corporations outside of the state may exchange insurance with persons or corporations within the state, did

not violate Const. U. S. Amend. 14 by impairing freedom to contract, being a valid exercise of police power.

[Judgment for association below. Here reversed against association.]

Lewelling et al. v. Manufacturing Wood-Workers' Underwriters (Ark. S. C.):

215 Southwestern Reporter (December 3, 1919) 258.

Fire Insurance—Non-Payment of Premium Notes—Forfeiture:

Provisions in a policy of fire insurance as to forfeiture for non-payment of the premium note or any instalment thereof, are valid and enforceable, and failure on part of assured to pay said notes when due is a sufficient defense in an action on the policy to recover for a loss occurring during the period when such premium is past due and unpaid.

Same—Same—Same—Waiver:

Insurer may waive provisions for forfeiture of policy for non-payment of premium notes.

Same—Same—Same—Same:

The right to enforce the forfeiture for non-payment of premium or premium note is not waived by mere failure or inaction on the part of the insurer.

Forfeiture—Waiver—Burden of Proof:

In an action on fire policy where the defense was based on forfeiture for failure to pay a premium note, the burden was on the plaintiff to prove there had been a waiver of the provision for forfeiture, and to show that the policy was in full force and effect at the time of the loss.

Premiums—Representations of Agent—Estoppel:

Representations of a fire insurance agent, made prior to or at the time of issuance or transfer of a policy, that notice of the time of payment of premium would be given insured in time to pay them, and that he need give himself no uneasiness on that subject, is not binding on the company, and such a representation can create no estoppel, as all previous arrangements are merged in the written contract.

Non-Payment of Premium—Forfeiture—Waiver—Evidence:

Mere indulgence in the payment of premiums does not constitute a waiver of the policy provision for forfeiture. The course of dealing must amount to a custom.

Same—Same—Same—Same:

Policy providing that it would not be binding if the premium or any instalment thereof was not paid at maturity. At maturity, the insurer made no demand on the insured for the payment of the premium note; it merely remains silent and inactive, and this did not constitute a waiver of the forfeiture provision.

[Judgment for company below. Here affirmed in favor of company.]

Cheatham v. Home Insurance Co. of New York (Ky. C. A.):

215 Southwestern Reporter (December 3, 1919) 281.

Fire Insurance—Premium—Payment by Check:

Where the fire policy exempts insurer from liability for loss occurring during default in payment of premium, payment by check of an overdue premium is not made until the check is received at the company's office, cashed, and applied to the extinguishment of the premium note.

Policy—Non-Payment of Premium—Lapse:

The policy exempted insurer from liability for loss occurring during default in payment of premium, and provided that policy should lapse until payment was made to company in New York. Instalment became delinquent October 1, and on the 11th, insured mailed a check to the insurer which was not received in New York until the 15th. The property was destroyed on the 12th. *Held*, That insured could not recover on the policy, which had lapsed and had not been reinstated.

Non-Payment of Premium—Forfeiture—Waiver:

Evidence of a single prior instance of accommodation and indulgence granted insured by insurer in the payment of an overdue premium was insufficient to establish a custom to accept instalment premiums after they were due.

Lapsed Policy—Premium Notes Returned by Company:

Where by the terms of the policy and premium note, the insurer had the right to retain all premium notes and to collect a portion of them equal to the earned premium to the date of lapsing of policy, it was not required to return notes to insured before the policy became suspended, to avoid liability thereon for a loss subsequent to its lapse.

[Judgment for plaintiff below. Here reversed in favor of company.]

Continental Ins. Co. of New York v. Stratton (Ky. C. A.):

215 Southwestern Reporter (December 10, 1919) 416.

Policy—Exceptions—Burden of Proof:

In an action on a fire insurance policy, the plaintiff has the burden of proof to show that his cause of action does not fall within the excepting clauses of the policy.

Same—Explosions—Liability:

Where the fire policy provided that the company should not be liable for loss caused directly or indirectly by explosion of any kind, and a building fell by reason of an explosion before fire broke out, the policy was terminated by the falling of the building.

Action on Policy—Burden of Proof—Instructions:

In an action on a fire policy defended on the grounds that the building fell before the fire broke out as a result of an explosion, that company was not liable under a clause providing that it should not be liable for loss caused directly or indirectly by explosion, a correct charge upon the law governing liability was not equivalent to a direct charge upon the burden of proof; the defendant being entitled to an affirmative charge thereon.

Same—Matters Not in Issue—Instructions:

In an action on a fire policy, where there was no pleading or evidence relating to the question of a friendly or hostile fire, the court did not err in refusing to instruct upon such matter.

Same—Loss—Demand before Suit:

A demand of payment of loss and a refusal by insurer to pay before bringing suit on a fire insurance policy was unnecessary, where the loss was total, for the amount became a liquidated demand under Vernon's Sayles' Ann. Civ. St. 1914, art. 4874, upon the total destruction of the building by fire or as a direct result thereof.

[Judgment for plaintiff below. Here reversed in favor of company.]

Northwestern National Ins. Co. v. Westmoreland (Tex. C. C. A.):

215 Southwestern Reporter (December 10, 1919) 471.

Storm Insurance—Pro-Rating Loss:

Where an insurance policy covering loss by fire, storm and lightning provides that the company shall not be liable for a greater proportion of any loss on the property than the amount thereby insured bears to the whole insurance, and the property is destroyed by storm, the loss will be pro-rated among companies whose policies insured the property against storm, but not among those insuring it against loss by fire alone.

[Judgment in accordance with opinion.]

Angelica Water & Ice Co. v. Farmers' Mutual Fire Ins. Co. of Berks & Lehigh Counties (C. P., Berks Co., Pa.):

76 Legal Intelligencer (December 12, 1919) 884.

Sprinkler Insurance—Release by Insured—Subrogation:

Where a tenant gave his landlord a general release for damages sustained, because of a sprinkler leakage which was covered by insurance, the insurer's right to subrogation under this policy was barred, and there was a violation of the policy by the insured tenant.

[Judgment for company.]

Franklin Fire Ins. Co. of Philadelphia v. Weinberg et al. (N. Y. C. Municipal C.):

138 New York Supplement (December 15, 1919) 539.

Appeal—Error—Continuance—Ruling on Motion:

A trial court has considerable latitude in passing on an application for a continuance. Its action will not be reversed on appeal except for an abuse of discretion. Upon the showing made in this case, there was no abuse of discretion in denying an application for a continuance.

Fire Insurance—Policy—Reformation:

In the course of negotiations between plaintiff's husband and the agent of a fire insurance company for a policy cov-

ering property owned by plaintiff, the agent was informed that the property belonged to plaintiff and that the title was in her name. The court found that it was mutually intended by the husband and the agent of the insurance company that the wife should be named in the policy as the person assured, and that, through oversight and inadvertence on the part of the company, the husband's name was written in the policy instead of the wife's without knowledge of the mistake on the part of either the husband or the wife. *Held*, That the trial court was right in holding that there should be a reformation of the policy by substituting in the policy the name of the wife for that of her husband as the person insured thereby.

Same—Action to Reform—Right of Wife:

A prior action brought on the policy by plaintiff's husband in which he asserted ownership of the property, she not being a party to the action and not having authorized her husband to bring it did not estop her from maintaining an action for the reformation of the policy and a recovery thereon in her own right, the husband's action having been dismissed without a trial prior to the trial of her action.

[Judgment in accordance with opinion.]

Sundin v. County Fire Ins. Co. of Philadelphia et al.
(Minn. S. C.):

174 Northwestern Reporter (December 19, 1919) 729.

Action on Policy—Sufficiency of Evidence—Evidence:

The question whether or not the evidence offered in the case by the plaintiff is sufficient to entitle him to judgment may be raised by demurrer to plaintiff's evidence, by motion to find the issues for the defendant or by proper propositions of law submitted to the court for its hearing.

Same—Ambiguous Policy—Construction:

An insurance contract is to be interpreted and construed by the same rules as other mercantile contracts, and the principles governing such interpretation and construction do not differ from those controlling in other contracts; but where the insured company leaves its design or meaning doubtful by the use of language that is not clear, courts adopt a construction most favorable to the insured.

Same—Contract by Correspondence:

A contract entered into by means of letters written and mailed by the parties becomes complete when the latest proposition on the part of one of them is assented to by the other party.

Same—Same—Question of Law:

Whether or not letters written and mailed by the parties constitute a contract is a question of law for the Court.

Same—Preliminary Contract—Sufficiency:

A preliminary contract of insurance is sufficient if one of the parties to such a contract proposes to be insured and the other party agrees to insure and the subject, the period,

the amount and the rate of insurance are ascertained or understood and the premium paid as demanded. It is not necessary in such a preliminary contract that all the terms of the contract as finally expressed in the written policy should be specified as it will be presumed that the parties contemplate such form of policy containing such conditions and limitations as are usual in such cases or have been used before by the parties.

Same—Same—Completion:

A preliminary contract of insurance is complete and binding when the insured unconditionally accepts the proposition by letter duly mailed, and stamped and properly addressed, to the insurer, and where fire occurs between the time of depositing a letter in the mail and the arrival of such letter at its destination, the insurer is liable.

Same—Same—Written and Parol:

A preliminary contract of insurance may be enforced, although partly in writing and partly in parol.

Same—Same—Definiteness:

Where the rate is stated to be a reasonable rate to be finally determined when the necessary facts are ascertained, or what certain other companies charge for similar insurance, or for a certain amount less than such companies charge, the rate is sufficiently definite to make a binding preliminary insurance contract.

Same—Same—Same:

Where the insurer agreed by letter to insure a church and parsonage for a certain amount, a letter in reply, accepting the offer and stating that the church was worth \$40,000.00 and the parsonage \$8,000.00, and insurance should be placed in that proportion, there was sufficient definiteness as to how the insurance was to be placed and thus constitute the completion of a binding contract.

Same—Same—Recovery—Interest:

Where the preliminary contract of insurance did not definitely fix the time for payment of the insurance, interest could not be recovered on the amount of damage by fire from the date of the fire, insured in such case being entitled to recover only interest after a reasonable time had lapsed for paying the insurance, unless where proved that the usual provision of the insurer's policy provided for the payment of interest from date of loss.

[Judgment in accordance with opinion.]

Cottingham et al. v. National Church Ins. Co. (Ill. S. C.):

124 Northeastern Reporter (December 23, 1919) 822.

Policy—Inventory Clause—Promissory Warranty:

The clause of a fire insurance policy requiring a complete itemized inventory of the stock insured constitutes a promissory warranty and failure substantially to comply therewith avoids the policy.

Action on Policy—Inventory Clause—Insufficient Compliance:

Inventory of insured's lumber furnishing date from which the number of feet of pine boards, oak boards, oak timber, and gum ties, could be ascertained, but containing nothing to indicate the grades of the classes of lumber or whether composed of different grades, was not a substantial compliance with the promissory warranty of the policy requiring a complete itemized inventory of the insured stock.

Same—Estoppel—Appeal and Error:

In an action on fire policy, in the absence, not of evidence on the point, but of the necessary pleading of estoppel against defendant assurer to assert forfeiture of the policy for non-compliance with the inventory clause, insured contends that the insurer is estopped will not be considered further than to determine whether, in view of the necessity of reversing the cause should be remanded for amendment of the pleadings to make the issue of estoppel and for subsequent trial on that issue.

Appeal and Error—Judgment—Remand:

Where, upon reversal of a cause, it seems probable that the ends of justice may be better served by remanding than by rendering judgment, the former course should be pursued, notwithstanding it is apparent that a full consideration of a case necessitates that the pleadings be amended.

[Judgment in accordance with opinion.]

Camden Fire Ins. Co. v. Yarbrough (Tex. Com. A.):

215 Southwestern Reporter (December 24, 1912) 842.

Action on Policy—Existing Law:

"Farm Form," pasted on face of standard fire policy, insuring against burning of barn and not the farm dwelling and providing that policy shall become void "if the dwelling be or becomes vacant or unoccupied except in accordance with the conditions of the policy" was not rendered invalid at vacancy of the dwelling. Under 2 comp. St. 1910 Para. 2862, Sec. 77, as amended; such provision being inconsistent with provision of standard policy requiring the insured "building" to become vacant in order that forfeiture clause shall take effect.

Same—Occupancy of Farm—Sufficiency:

In order to "occupy" a barn within the provision of the fire policy, it is not necessary that insured live or sleep in the barn, it being a sufficient compliance with the policy if the property insured is put to the use contemplated by the parties, as expressed in the contract.

Same—Forfeiture—Construction:

Courts are averse to forfeitures and seek a construction of a forfeiture clause in a policy which will sustain it, even though a construction which will defeat it is reasonably deducible from the terms or words used to express it.

Same—"Vacant or Unoccupied"—Evidence Considered:

Where carts, wagons, farming implements and other property in barn at time of fire had been used almost daily up to the time of the fire and where insured's tenant had visited the barn frequently for the purpose of getting farming implements therein within two or three days of the fire and once on the day thereof, the barn was not "vacant or unoccupied" at the time of the fire, within the provisions of the policy, making it void if "vacant or unoccupied," for ten days.

[Judgment in accordance with opinion.]

Corlies v. Westchester Fire Ins. Co. (N. J. S. C.):

108 Atlantic Reporter (December 25, 1919) 152.

Pleading—Contract—Construction:

Where plaintiff pleads of conclusion of fact as to the nature of the contract set out in the complaint, it is the court's duty to consider the language of the instrument itself and give it proper legal construction.

Broker—Contract:

A letter signed by a firm of insurance brokers, stating that "pending receipt of our covering notice, this will serve to protect you against loss * * * from fire," on certain property, "coverings being in" defendant company, was not binding upon the defendant as it amounted to only the personal promise of the broker to procure from defendant said insurance for plaintiff.

Auto Fire Insurance—Change of Ownership—Forfeiture:

Where insured automobile dealer sold and delivered an insured car to one who drove it to another state without the knowledge or consent of insurer and it was there destroyed by fire, the insurer was not liable for the loss, under provision forfeiture for change of interest, title or possession.

[Judgment in accordance with opinion.]

Cranston et al. v. Calif. Ins. Co. (Ore. S. C.):

185 Pacific Reporter (December 29, 1919) 292.

Action on Policy—Value of Policy—Statute:

The effect of Acts 1909 c. 447 (Thomp. Shan. Code Sec. 3348 a) is to make every policy of fire insurance a valued policy unless the contract falls within one of the exceptions permitted by the Act.

Same—Coinsurance—Validity:

Coinurance clause may be lawfully inserted in fire insurance policy and will be enforced by the courts in the absence of any statutory regulation of the subject.

Same—Same—Same:

Thomp. Shan. Code Sec. 3348 a, 3348 a1 and a2, relating to coinsurance clause and the valuation in fire policy enters into and becomes a part of every fire insurance contract.

Same—Same—Enforcement:

Tenn. St. relating to coinsurance and valuation clause in fire policy, permit the insured to be treated as a coinsurer only as to the difference between the amount of the proportion agreed to be maintained by assured and the insurance in force. A coinsurance clause limiting insurer's liability to such porportion of the whole loss as the amount of the insurance policy to the cash value of the whole property is not enforceable where the policy contained no stipulation as to any proportion of insurance to be carried by insured or any agreement to maintain insurance equal to the cash value.

Same—Enforcement of Payment—Penalty:

Where the question upon which the liability of insurer depended was a new one, the case was not one for a penalty.

[Judgment in accordance with opinion.]

Thompson v. Concordia Fire Ins. Co. (Tenn. S. C.):

215 Southwestern Reporter (December 31, 1919) 932.

Policy—Warranty—Waiver:

The clause in a fire insurance policy on a cotton gin, whereby insured warranted, under penalty of forfeiting, that the property should be in active operation during the ginning season., *Held*, Not waived by insurer because its agent was informed that insured had not ginned any cotton during the season preceding the policy year, while too little cotton was produced in the vicinity during the policy year to permit profitable operation.

Same—Forfeiture Severance:

By virtue of the agreement of a cotton gin owner embodied in his fire insurance policy that each item of the insured property other than the buildings should be considered as personalty, the machinery and other property must be treated as personal property, as respects the application of Vernon's Sayles Ann. Civ. St. 1914, Art. 4874a, as to breach of personal property policy; promissory warranty not contributing to the loss.

[Judgment for plaintiff below. Here affirmed against company.]

Westchester Fire Ins. Co. v. Roan (Tex. C. C. A.):

215 Southwestern Reporter (December 31, 1919) 985.

Action on Policy—Appraisers—Arbitration and Award:

Every reasonable intendment is in favor of an award made by appraisers who have acted pursuant to the terms of the arbitration clause in a fire policy, and their award will be sustained though it does not conform to what would have been the judgment of the court.

Same—Same—Same:

Award made by appraisers acting pursuant to the arbitration provision in a fire policy will not be sustained where such appraisers omitted items of damage, did not accept insurer's offer of information, and failed to notify him as to the date of hearing.

Same—Same—Same:

Insured having once in good faith undertaken to have an estimate of the amount of his loss made by appraisers appointed pursuant to the terms of the policy, and the appraisal having been defective and invalid without fault on the part of the insured, insured is not required to submit to a second appraisal of his loss.

[Judgment for plaintiff below. Here affirmed against company.]

Aetna Ins. Co. v. Hefferlin (U. S. C. C. A.):

260 Federal Reporter (January 1, 1920) 695.

Action on Policy—Vacancy—Forfeiture:

A stipulation in a policy of fire insurance that the entire policy shall be void in case the premises shall become vacant and so remain longer than a certain period of time, is a reasonable and valid provision, and in case such insured premises are destroyed by fire while vacant, after having so remained for a longer time than allowed by the terms of the policy, the insured, in the absence of a waiver of such condition, will not be entitled to recover the indemnity provided in the policy.

Same—Same—Waiver:

Where a policy of fire insurance provides that the entire policy shall be void, unless otherwise provided by endorsement thereon, or attached thereto, if the interest of the insured shall be other than that of unconditional sole ownership, or if the property shall become vacant and unoccupied and so remain for a period longer than ten days, an endorsement attached to said policy, stating that the interest of the insured is that of fee simple in remainder, after a certain life estate therein mentioned, will not make inapplicable or waive the condition or warranty, rendering the policy void in case the premises are vacant at the time of the fire, and had been so vacant for a longer period than that provided in the policy.

[Judgment for company below. Here affirmed in favor of company.]

Bias et al. v. Globe & Rutgers Fire Ins. Co. (W. Va. S. C. A.):

101 Southeastern Reporter (January 3, 1920) 247.

Action on Policy—Inventory—Compliance:

Where insured in preparing an inventory of stock omitted old, unsaleable stock, the policy was not avoided.

Same—Same—Same:

Where insured produced memorandum of an inventory taken in July, before the policies were issued, and complete inventory taken in the following January, together with a record of transactions occurring thereafter, it was *Held*, That the fact that the earlier inventory was burned and so was not produced would not defeat recovery despite requirements of the policy as to taking an inventory and keeping it in an iron safe.

Same—Trial—Directed Verdict:

The trial court is never justified in giving a peremptory charge where reasonable minds differ respecting a particular issue under investigation.

Same—Same—Same:

Where the defendant insurer did not object to the introduction of evidence establishing facts which would have been shown by the inventory had it not been destroyed, it cannot raise objection to such evidence by assigning errors to refusal of motion for direction of verdict.

Same—Inventory—Destruction:

Where the insured duly prepared an inventory and kept it in an iron safe, the fact that the inventory was removed from the safe before the fire, without insured's knowledge, and had been left in a desk and was destroyed, would not avoid the policy.

Same—Destroyed Inventory—Evidence:

In an action on a policy of fire insurance where it appeared that the inventory was destroyed through no fault of insured, the submission of books and other data produced by the insured was proper.

Appeal and Error—Secondary Evidence—Harmless Error:

The submission in evidence of data presented by insured where it appeared that the original inventory was destroyed, through no fault of insured, was harmless if erroneous, as it could not have affected the result.

[Judgment for plaintiff below. Here affirmed against company.]

Westchester Fire Ins. Co. v. Biggs (Tex. C. C. A.):

216 Southwestern Reporter (January 7, 1920) 274.

Action on Policy—Premium—Payment:

Under a resolution of a fire insurance company agreeing to accept a missing assessment check in payment, if received in a reasonable time, the time from March 13, 1918, to May 4, 1918, when such resolution was rescinded because the check had not been received, was a reasonable time.

Same—Same—Same:

Where insured's assessment check, though not received by insurer, was accepted as payment by resolution, which resolution was later rescinded because check had not been received within reasonable time, the intervening acceptance of a cash payment of assessment was not a part of the minutes or authorized by it, and was subject to explanation, and that if check was received within reasonable time payment should relate back to date it was alleged to have been sent, but that if not, the cash payment should not relate back or be deemed payment.

[Judgment for company below. Here affirmed in favor of company.]

Shuman v. Main, Beaver & Black Creek Mut. Fire Ins. Co. (Pa. S. C.):

108 Atlantic Reporter (January 8, 1920) 265.

Action on Policy—Inventory—Sufficiency of Evidence:

In an action on policy of fire insurance covering stock of goods, evidence held to show that the inventory taken February 1, did not include purchases by insured during the preceding January.

Same—Same—Compliance:

The taking of an inventory on February 1, without including purchases by the insured during the preceding January, did not violate the policy, which required a complete itemized inventory of stock on hand where the invoices of all such purchases were preserved in an invoice book and were shown in detail as fully as they would have been shown by inventory.

Same—Same—Same:

A fire policy requiring "Complete itemized inventory of stock on hand" did not require insured, in making inventory, to record the stock numbers of the items of goods in order that such goods could be traced to the former inventory or to invoices of them.

Same—Same—Same:

An inventory of stock of goods in an amount more than \$90,000.00 was not invalid because of lumped entries such as "one lot jewelry \$10.00" where such entries were few in number.

Same—Same—Set of Books:

Where the policies required insured to take an inventory and keep a "set of books, which shall clearly and plainly present a complete record of business transacted, including all purchases, sales and assessments from date of inventory," insured was not required to record in such books the original purchases of all goods at his branch stores for a period of time preceding the taking of the inventory.

Same—Stock of Goods—Encumbrances:

Insured's note in the usual form of a negotiable collateral security note did not violate the provisions of the fire policy, making the policy void upon encumbering goods with chattel mortgage, as such note was insufficient to create a chattel mortgage.

Same—"Unconditional and Sole Ownership":

Insured's note in the usual form of a negotiable, collateral security, note making his stock of goods covered by fire policy collateral for payment of note, did not avoid the policy under its provision making it void, if the interest of the insured in the goods be other than "unconditional and sole ownership."

Same—Proof of Loss—False Statements:

False filing in the proof of loss, in order to forfeit the policy, must consist of an oath to statements knowingly and wilfully false or recklessly made.

Appeal and Error—Restricting Argument—Harmless Errors:

Error in unduly restricting argument of appellant's counsel on the evidence relating to a certain fact is harmless where the evidence establishes such facts contrary to appellant's contention.

[Judgment for company below. Here reversed against company.]

Lavenstein Bros. v. Hartford Fire Ins. Co. (Va. S. C. A.):
101 Southeastern Reporter (January 10, 1920) 321.

Action on Policy—Unchallenged Pleading—Recovery:

If a pleading is not challenged it will sustain a recovery, if proved.

Same—Directed Verdict—Pleading:

Attack on the answer by plaintiff's motion for a directed verdict since it advised the trial judge that the sufficiency of the answer was objected to prevented any estoppel against plaintiff to urge defect in such answer.

Same—Premium Note Attached to Policy—Statute:

Under Code Sec. 1741 if it comes properly before the court that a copy of the premium note was not attached to the policy, the insurer cannot avoid payment, though he pleads and proves that the loss occurred at a time when, both under statute and under contract, the policy was in suspension for non-payment of the premium note; but insured cannot get the benefit for failure to attach a copy where he has failed to plead such failure in avoidance.

[Judgment for company below. Here affirmed in favor of company.]

Alexander Bros. v. Hawkeye & Des Moines Ins. Co.
(Ia. S. C.):

175 Northwestern Reporter (January 16, 1920) 24.

Policy—"Wind Storm"—Recovery:

Where insured's building was insured against tornado, cyclone or wind storm, it was held that the evidence justified the jury in finding that insured's building was destroyed by "wind storm" as defined by the trial court in instruction.

[Judgment for plaintiff below. Here affirmed against company.]

Thomas J. Mulgrew Co. v. National Union Fire Ins. Co.
(Ia. S. C.):

175 Northwestern Reporter (January 16, 1920) 50.

Policy—Change of Title—Evidence Considered:

Where insured, desiring to sell the insured premises, executed a deed, naming as grantee a broker engaged to obtain a purchaser and assigned to him a written contract for the sale of such premises, which acts were done without any intention of transferring the title, such actions will not defeat recovery on the policy which provides that if title to the property be changed the risk should cease.

Appeal and Error—Submission of Issues—Estoppel:

Where both parties move for a directed verdict and defendant conceded that there was no issue of fact save the one as to damages which was submitted, such defendant cannot complain in the Appellate Court that another issue of fact was not submitted.

[Judgment for plaintiff below. Here affirmed against company.]

Phillips v. Farmers' Mut. Fire Ins. Co. of Kalamazoo County (Mich. S. C.):

175 Northwestern Reporter (January 16, 1920) 144.

Fire Insurance—Loss—Subrogation:

Insurer is not entitled to the right of subrogation against insured where insured's loss exceeds his recovery from insurer and the one causing the fire, after deducting attorney's fees and costs, though insured was not invited to take part in the action against the third person and though the policy was a valued policy; the insurance being for only two-thirds of the value.

[Judgment in accordance with the opinion.]

Washtenaw Mut. Fire Ins. Co. v. Budd et al. (Mich. S. C.):

175 Northwestern Reporter (January 23, 1920) 231.

Agency Contract—Termination—Evidence Considered:

In an action by agent against insurance company for compensation, the evidence was held to sustain the jury's finding of termination of agency at date claimed by plaintiff agent.

[Judgment in accordance with opinion.]

Cook v. Detroit National Fire Ins. Co. (R. I. S. C.):

108 Atlantic Reporter (January 29, 1920) 417.

Policy—Explosion—Liability:

Where dynamite was placed under a nearby building with the intention of destroying it for the purpose of arresting the conflagration and the charge was of sufficient force not only to blow the building up under which it was placed, but to injure other buildings, the liability of the insurance company extended to the other buildings upon which it carried a policy of insurance, just the same as its liability would have arisen if the policy had covered the building under which the charge of dynamite was so placed.

[Judgment for plaintiff below. Here affirmed against company.]

Westchester Fire Ins. Co. v. Bell (Ga. C. A.):

101 Southeastern Reporter (January 31, 1920) 590.

Annotation—Construction of Hail Insurance Policy:

Under the above heading appears an annotation to the case of Reeves v. Nat'l Fire Ins. Co., heretofore reported in 170 Northwestern Reporter 575; 4 A. L. R. 1293.

Action on Policy—Proofs of Loss—Waiver:

Where a holder of fire insurance policies suffers a loss and notifies the insurance company thereof, and the company's adjuster is sent to investigate the loss, and he with assistance of the assured makes an estimate and inventory of the property, and he and another agent of the company make repeated offers to settle with the assured on the basis of such inventory, which offers are declined by the assured, and the company demands an arbitration of the amount of the loss, the acts of the company and its agents are a waiver of more formal proofs of loss, but the assured is not bound by the count of the loss as calculated by the adjuster; and, in an action to recover on her policies, the assured is entitled to judgment for the full amount of her loss, regardless of the inventory when the defendant knew that the plaintiff had denied its fairness from the time it was made.

Same—Practice:

No error can be based on matters not clearly brought to the attention of the trial court for its ruling thereon, nor can a trial court's judgment be disturbed where the appellant's substantial rights have not been prejudicially affected.

Same—Attorney's Fees:

An allowance of attorney's fees of \$350 in an action to recover on insurance policies for loss of property by fire was not erroneous.

[Judgment for plaintiff below. Here affirmed against company.]

Clark v. Milwaukee Mechanics' Ins. Co. (Kan. S. C.):

185 Pacific Reporter (February 2, 1920) 1056.

Action on Policy—Arson—Evidence Considered:

Evidence considered, that it was held sufficient to justify the submission of a question whether the fire which consumed the property insured, was set by the insured.

[Judgment in accordance with opinion.]

Overcrest Farm, Inc. v. New York Cent. Mut. Fire Ins. Co. et al.;

Same v. Oneida Co-op. Fire Ins. Assn. et al. (N. Y. S. C.):

179 New York Supplement (February 2, 1920) 352.

Fire Insurance—Insurable Interest:

One who agreed to superintend the building of a ferry boat, proceeding under his own credit to supply the necessary work and material when plaintiff did not live up to his agreement by furnishing money as needed, had an insurable interest in the boat and material.

[Judgment in accordance with opinion.]

Donavin v. Thurston (N. Y. S. C.):

179 New York Supplement (February 2, 1920) 473.

Action on Policy—Total Loss—Measure of Recovery:

In an action on fire policies in the Massachusetts Standard form containing two additional clauses termed "disclaimer

clause" and a "demolition and increased cost of construction clause" permitted by statute, 1907 c. 576, Sec. 60 Subd. 7, the insurers were held liable for total destruction of the building in an amount limited to the actual value of the property when the loss occurred. The disclaimer and demolition and increased cost clauses were applicable only in question of partial loss.

[Judgment in accordance with opinion.]

King et al. v. Niagara Fire Insurance Co. (Mass. S. C.):
125 Northeastern Reporter (February 3, 1920) 572.

Action on Oral Contract to Review—Pleading:

The petition in an action on an oral contract to review insurance on certain property against fire is fatally defective where it fails to allege consideration and such defect could not be cured by amendment after judgment.

Same—Same:

The rules applicable to defectively stated causes of action are not applicable in cases where no cause of action is pleaded.

Fire Insurance—Oral Contract—Evidence:

In an action on a parol contract insuring property against loss by fire, it was *Held*, That the testimony showed a contract in praesenti and not an agreement to enter into the contract.

[Judgment in accordance with opinion.]

Swift et al. v. Central Union Fire Ins. Co. (Mo. S. C.):
216 Southwestern Reporter (February 4, 1920) 935.

Policy—Ownership—Knowledge of Agent:

Where an insurance broker soliciting for a general agent of a fire insurer had knowledge that insured was not the sole owner of the fixtures insured, insurer was not bound by such broker's knowledge and the policy issued was void, under its provision that it should be so if interest of assured was other than unconditional and sole ownership.

[Judgment for company below. Here affirmed in favor of company.]

Salvate v. Firemen's Ins. Co. (R. I. S. C.):
108 Atlantic Reporter (February 12, 1920) 579.

Policy—Assignment—Reformation:

The court in granting recovery on fire policy on the theory that an agreement between the owner of a right of redemption and agent of insurer that the policy should be assigned to the purchaser at a sheriff's sale then and there accomplished such assignment, did not attempt to reform the policy or to afford relief that could not be obtained in an action at law.

Pleading—Variance—Practice:

If there was variance between the allegation of the complaint and the proof, it is not available in the reviewing court, if not brought to the attention of the trial court.

Policy—Modification—Estoppel:

Where insurer's agent with authority was directed to make an endorsement modifying terms as to whom loss was payable, and such agent retained the policies until after the fire, having given those interested to understand that such endorsement had been made, insurer was estopped to assert non-endorsement of such modification.

Same—Proof of Loss—Waiver:

Statements and conduct of insurer's local agent and adjuster waived notice and proofs of loss.

Same—Same—Same:

Clauses in insurance policy prohibiting waiver unless the same is endorsed thereon refer only to the provisions which enter into the contract of insurance, and they do not affect conditions which are to be performed after loss, such as furnishing proofs of loss and giving notice.

Same—Same—Same:

Notice and proofs of loss may be waived either by expressed words or by conduct inconsistent with an intention to enforce a strict compliance with the conditions, and which conduct is calculated to lead the insured to believe that the insurer does not intend to require such compliance.

Same—Same—Same:

An adjuster sent to adjust a loss, presumably has authority to waive proof of loss.

Action on Policy—Delivery—Pleading:

An allegation of plaintiff's complaint that fire policies were issued does not estop plaintiff to show that there was no delivery.

Policy—Sheriff's Sale—Waiver:

Sheriff's sale of the insured's property would not render policy void where insurer with knowledge of the proceedings waived all objection thereto by instructions to attach new loss payable clauses making loss payable to purchaser.

Same—Agent's Interest—Verdict:

The contingent interest of insurer's agent in the property insured would not render the policy written by him void, but at most, voidable.

Policy—Right to Redeem—Insurable Interest:

A right to redeem is an insurable interest, particularly where by the understanding of all parties concerned the debt of the mortgagor continued to exist, and the owner of the sale certificate held it as security.

[Judgment for plaintiffs below. Here affirmed against companies.]

Twin City Fire Ins. Co. v. Stockmen's Natl. Bank of Ft. Benton, Mont.;

Home Ins. Co. of New York v. Same (U. S. C. C. A.):

261 Federal Reporter (February 12, 1920) 470.

Policy—Ambiguity—Construction:

For the purpose of construction, an insurance policy is not regarded as an ordinary contract; and where the language of the policy is ambiguous that construction will be adopted which is most favorable to the insured.

Action on Policy—Sprinkler Leakage—Tornado:

In an action on a policy insuring against damage from sprinkler leakage and providing that the company should not be liable for loss by fire or leakage caused directly or indirectly by fire, or for loss caused by lightning, cyclone, tornado or wind storm, etc., it was *Held*, in view of the other exceptions and the main purpose of the policy, That the policy covered loss from leakage caused by tornado which injured the sprinkler system.

Same—Fire—Lightning:

Under the ordinary fire policy providing that the insurer shall not be liable for loss by lightning, there is a liability for loss by fire started by lightning though none for damages caused by the lightning itself.

Same—Pleading—Statute:

Under Burns Ann. St. memorandum accompanying demurrer to answer and reply must point out defects.

[Judgment for company below. Here reversed against company.]

Maxwell v. Springfield Fire & Marine Ins. Co. of Springfield, Mass. (Ind. App.):

125 Northeastern Reporter (February 17, 1920) 645.

Policy—Insurable Interest—Payment:

Where insured had no insurable interest in the property insured by fire policy, insured could not recover on draft given in settlement for loss and had the draft been honored the insurer on discovery of lack of insurable interest, could have sued to recover the money so paid.

Same—Same—Jury:

The question whether insured had an insurable interest was a question of fact for the jury.

Mortgage—Insurable Interest—Evidence:

Insurable interest of mortgagor having an oral contract of repurchase from his mother.

Application—Proof of Loss—Misrepresentation:

The failure to disclose information as to a void mortgage in an application for fire insurance did not avoid policy or failure to mention the same in proof of loss was not fraudulent misrepresentation.

Action on Policy—Evidence—Jury:

The jury could disregard, though uncontradicted, plaintiff's entire evidence relating to title and interest in the property.

Same—Contract—Consideration:

The instrument under seal imports a consideration.

Same—Same—Same:

Where insurer gave its draft in receipt for policy in compromise of insured's claim for loss, such compromise furnished ample consideration to support insurer's promise to pay amount represented by its draft.

Same—Same—Same:

Mere acceptance by insured of insurer's draft together with surrender and cancellation of policy was not sufficient consideration to support insurer's promise to pay.

[Judgment in accordance with opinion.]

Morrison v. Boston Ins. Co. et al. (Mass. S. C.):

125 Northeastern Reporter (February 17, 1920) 698.

Action on Policy—"Blanket Policy"—Coverage:

Certain policies of insurance on forest products at eight locations "on Saari Bros. Railroad" were blanket policies and were not pro rated among the specific locations but covered each to the full amount.

Same—Same—Same:

Such policies also covered products adjacent to locations especially not piled or banked but ready for loading and left for the purpose of being loaded without being banked. Such products were "situated" at such locations within the meaning of the policy.

Policy—Agent of Insured—Authority:

An insurance agent who without the knowledge of the insured procured another agent to write the risk, dividing commissions with him, was not authorized as an agent of insured to make terms or to bind insured by stipulations not imposed in the policy and not known to him.

Same—Contract—Construction:

All reasonable doubt in a policy of insurance prepared by an insurer must be resolved in favor of insured.

[Judgment for plaintiff below. Here affirmed against company.]

Zenith Box & Lumber Co. v. National Union Fire Ins. Co. (Minn. S. C.):

175 Northwestern Reporter (February 20, 1920) 894.

Action on Policy—Parties—Practice:

Where the policies covered cattle in pens or cars at stock yards, the Live Stock Exchange being liable for premiums and being the party insured though for the account of whom it might concern one of the members of such exchange which sustained a loss of cattle by fire such member had no right of action on such policy against the insurer, as under New York Code, Civ. Proc. Sec. 449, the right of

action was in the Live Stock Exchange as active trustee of an express trust.

[Judgment in accordance with opinion.]

Wilson & Co. v. Hartford Fire Ins. Co. (N. Y. S. C.):

179 New York Supplement (February 23, 1920) 887.

Action on Policy—Proofs of Loss—Waiver:

Where insurer of automobile against fire made settlement eight months after loss with a garage, the mortgagee, there was no waiver of proofs of loss on the part of the insured owner, mortgagor.

Same—Same—Evidence:

In an action on a policy covering an automobile against fire, in the absence of the usual steps preliminary to introduction of evidence to prove the contents of the proof of loss alleged to have been mailed to insurer, such evidence could not have been heard.

Proofs of Loss—Mailing—Presumption:

There could be no presumption of the receipt of proofs of loss in the mail in due course, unless it affirmatively appeared that the letter was duly stamped and deposited in the mail.

[Judgment for company below. Here affirmed in favor of company.]

Glazer v. Williamsburg City Fire Ins. Co. (Ind. App.):

125 Northeastern Reporter (February 24, 1920) 787.

Policy—"Builder's Risk Clause"—Coverage:

Where there was attached as a rider to a fire policy insuring building for a term of one year, a "builder's risk clause" providing that the policy was to cover property only while building was in process of erection, the building was covered by such policy only while being constructed.

Same—Same—Validity:

A builder's risk clause attached as a rider to a fire policy, stipulating that the building was to be covered by such policy only during process of construction was a valid condition.

Same—Mistake—Reformation:

Where a builder's risk clause providing that policy was to cover building only during process of construction was attached as a rider to a policy insuring the building against fire for a term of one year, and insured, a lawyer experienced in insurance matters, accepted the policy with such rider attached without reading the policy, insured was not entitled to have policy reformed to cover building for term of one year.

Same—Same—Same:

While in equity a rescission of a contract may be adjudged on the ground of a unilateral mistake in its contents, in order that a reformation may be adjudged, there must be a mutual mistake or inadvertence or the excusable

mistake of one party and fraud of the other, and further there must have been a meeting of the minds of the contracting parties concerning the agreement which the court is asked to declare existing.

Same—Contract—Negligence:

Ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations.

Same—Same—Presumption:

One who signs or accepts a written contract in the absence of fraud or other wrongful act on the part of another contracting party is conclusively presumed to know its contents and to assent to them.

[Judgment in accordance with opinion.]

Metzger v. Aetna Ins. Co. (N. Y. C. A.):

125 Northeastern Reporter (February 24, 1920) 814.

Policy—Cancellation—Method:

Insured could cancel policy only in the manner provided in the policy, which required premium to be first paid.

Action on Policy—Instruction—Evidence:

Insured's instruction in an action on notes for insurance premiums as to surrender of policy being accepted by insurer or an agent with authority, having no support in the evidence, should not have been given.

[Judgment for defendant below. Here reversed in favor of company.]

Home Ins. Co. v. Fleeman (Mo. C. A.):

217 Southwestern Reporter (February 25, 1920) 536.

Action on Policy—Assignment—Evidence:

In an action on a fire policy by the owner of the property, who, with the consent of the insurer, assigned his interest as owner as security for a loan, it was proper for the court to allow the real nature of the assignment which was not an absolute transfer, but to protect lender in his mortgage, to be explained.

Same—Attorney's Fees—Statute:

There could be no allowance of attorney's fee, under Missouri law in an action on a Kansas fire policy.

[Judgment for plaintiff below. Here affirmed against company.]

Ayers v. Continental Ins. Co. (Mo. C. A.):

217 Southwestern Reporter (February 25, 1920) 550.

Policy—Cancellation—Notice:

Where insured was entitled to five days' notice in writing of insurer's intention to cancel his policy of fire insurance, there was no valid cancellation without such notice.

Action on Policy—Agency for Insured—Question for Jury:

The mere fact that insured relying on agent of insurer to keep his fire insurance in force and in regular order did

not render such agent the representative both of insurer and insured and the question of agency for insured was for the jury.

Action on Policies—Release—Evidence:

A release to insurer specifically showing that it covered loss under policy No. 8052 had no effect on the liability of the insurer under another policy No. 8053, where the evidence failed to show that insured accepted such payment as a satisfaction of his entire claim under both policies.

[Judgment for plaintiff below. Here affirmed against company.]

Dallas v. Guardian Fire Ins. Co. (S. C. S. C.):

101 Southeastern Reporter (February 28, 1920) 859.

Action for Damages—Mortgage—Contract:

Where mortgaged property was insured against fire and insured sold the property, a new insurance contract arising between the insurer and purchaser by agreement endorsed on the policy and after a fire resulting in complete loss, plaintiff bought the property with the policy from such purchaser, the fire insurer was not liable to plaintiff having properly paid the mortgagee the full amount of the insurance which was the amount of the mortgage.

Payment—Delay—Punitive Damages—Payment of Loss:

A fire insurer had the right to delay payment of loss until it could discover the party who was entitled thereto and for so delaying, it was not liable for punitive damages.

[Judgment for plaintiff below. Here reversed in favor of company.]

Stevens v. Hartford Fire Ins. Co. (S. C. S. C.):

101 Southeastern Reporter (February 28, 1920) 848.

Action on Policy—Occupancy—Change of Name:

Where a rider to a fire policy stipulated that the building insured was occupied as a club house by "Automobile Country Club," and later the name was changed to "Monrovia Country Club," new manager placed in charge, but membership remaining practically unchanged, and purposes of two organizations remaining identical, it was *Held*, That such rider was not intended to guard against a mere change in the name and management of the club and that there was no violation of the change of occupancy clause.

Same—Lease—"Change in Title":

A lease is not a change in the title or interest in the property within the meaning of a policy of fire insurance stipulating that the company "shall not be liable where the interest in, title to, or possession of, the subject of insurance is changed."

Same—Forfeiture—Construction:

Provisions in fire insurance policies are always construed so as to prevent a forfeiture if they reasonably admit such a construction.

Same—Agency—Evidence:

Where the owner of property accepted policies taken out by the order of a mortgagee through an agent authorized by such mortgagee to cancel and rewrite the insurance at will, without knowledge that such agent had the authority to cancel the insurance, such owner was not bound by notice of cancellation received by such agent.

[Judgment for plaintiff below. Here affirmed against company.]

Cronen-Wett v. Iowa Underwriters of Dubuque Fire and Marine Ins. Co. (Cal. D. C. A.):

186 Pacific Reporter (March 1, 1920) 824.

Action on Policy—Lease—"Change of Title":

A lease is not a change in the title or interest in the property within the meaning of a policy of fire insurance stipulating that the company "shall not be liable where the interest in, title to, or possession of, the subject of insurance is changed."

Same—Mortgage—Subrogation:

The provision in standard fire policies to the effect that when insurer shall pay to the mortgagee any sum under the policy and shall claim as to the owner that no liability therefore existed, the company shall be subrogated to the rights of the mortgagee under all securities held as collateral to the mortgage debt and shall receive full assignment of the mortgage, etc., applies only to a claim by the insurer of no liability to the mortgagor supported by legal rights.

[Judgment for plaintiff below. Here affirmed against company.]

Cronen-Wett v. Dubuque Fire & Marine Ins. Co. (Cal. D. C. A.):

186 Pacific Reporter (March 1, 1920) 826.

Policy—Limitation of Action—Evidence:

Though the policy barred action unless commenced within twelve months after the fire, insured's action was not barred by such limitation where insured acting diligently and in good faith was unable to bring suit within that time.

Same—Same—Same:

Evidence of negotiations between company and insured regarding a loss was admissible on the question of whether company waived the time limited for bringing suit in policy and on question of diligence on the part of insured.

Same—Loss—Time for Suit:

Under a fire policy providing loss payable 60 days after notice, ascertainment and satisfactory proof of loss, and providing further for the appraisement in the event of disagreement, insured could sue immediately upon the expiration of the 60 days, if the parties agreed to the loss or the insurer failed to object to the amount demanded within the 60 days.

Same—Failure to Protect Property after Fire—Measure of Recovery:

Insured's failure to protect property after fire did not prevent his recovery under a fire policy requiring such protection, but merely reduced the damages.

Appraisement—Umpire—Instruction:

An instruction that it was as much the duty of insurer as of the insured to seek a new appraisal where appraisers could not agree on an umpire was proper.

Action on Policy—Offers of Compromise—Evidence:

In an action on policy testimony of offers of compromise were inadmissible and their admission was prejudicial.

Same—Same—Appraisement:

In an action on policy under which appraisers could not agree on an umpire, a letter demanding a new appraiser was admissible to prove such demand.

Same—Same—Pleading:

Where plaintiff alleged the appointment of competent and disinterested appraiser, he could not prove that defendant's appraiser was incompetent or interested.

[Judgment for plaintiff below. Here affirmed against company.]

Messler v. Williamsburg City Fire Ins. Co. (R. I. S. C.):

108 Atlantic Reporter (March 4, 1920) 832.

Reinsurance—Contract—Privity:

There is no privity of contract between a reinsurer and the insured, and the reinsurer is not liable to the insured, being merely an indemnitor, liable only to the insurer whose risk is reinsured, recovery on the policy of reinsurance inuring not to the benefit of the insured, but to the benefit of the general creditors of the reinsured.

Same—Same—Same:

One must be a party or in the privity to a contract to enable him to maintain a suit in equity for its cancellation.

Same—Policy Taking Effect as Original Insurance—Liability:

Where the insurer knew at date of issuance of policy that the original policy was outstanding and relied on agreement of insured's agent that it would be surrendered, not only did the insurer become an original insurer, but the company with which it reinsured part of the risk, understanding the insurer's policy was to constitute original insurance and that the other policy was to be surrendered, was liable on its policy of insurance.

Same—Same—Estoppel:

Insured, having accepted another policy of insurance with notice and knowledge that it was issued under an agreement that the original policy would be surrendered, is estopped to claim that policy agreed to be surrendered remained in effect.

Same—Equity—Pleading:

The complaint by a reinsurer to restrain action on policy was demurrable on the ground that equity will not assume jurisdiction where there is an adequate remedy at law.

[Judgment in accordance with opinion.]

Insurance Co. of the State of Pennsylvania v. Park & Pollard Co. et al. (N. Y. S. C.):

180 New York Supplement (March 8, 1920) 143.

Fire Insurance—Oral Contract—Pleading:

A petition based on an oral contract of fire insurance which failed to allege a consideration failed to state a cause of action.

Oral Contract—Consideration—Pleading:

A petition based on an oral contract of fire insurance and alleging that such oral contract was on the same terms, so far as applicable, as the terms embraced in a certain writing, which plaintiff had with defendant, and setting such writing out at length did not sufficiently allege consideration merely because the writing set out contained a consideration.

Same—Same—Same:

In an action on an oral contract of fire insurance a petition could not be amended after verdict so as to allege a cause of action.

Same—Same—Same:

Where a petition on an oral contract of fire insurance failed to state a cause of action and judgment was rendered thereon, the proper practice is to arrest the judgment and grant plaintiff a new trial with leave to amend so as to state a cause of action.

Same—Same—Same:

The failure to state a cause of action may be urged for the first time on motion for new trial and in arrest of judgment.

[Judgment in accordance with opinion.]

Swift et al. v. Central Union Fire Ins. Co. (Kansas City C. A., Mo.):

217 Southwestern Reporter (March 10, 1920) 1008.

Insurance Proceeds—Mortgage—Distribution:

If a mortgagee insures his own interest at his own expense the payment of a loss accruing before the mortgage debt is paid, is not a payment on the mortgage, and, if the mortgagor insured his separate interest without any reference to that of the mortgagee, in case of a loss, he is entitled to receive the insurance and to deal with it as he pleases; and when the insurance is effected by or at the expense of the mortgagor and the policy is made payable to the mortgagee as his interest may appear, the proceeds

of the policy are for the benefit of both mortgagor and mortgagee.

[Judgment in accordance with opinion.]

Sisk v. Rapuano et al. (Conn. S. C. E.):

108 Atlantic Reporter (March 11, 1920) 858.

Fire Insurance—Action on Policy—Proofs of Loss—Appraisal—Recovery:

In an action on a fire policy where it was shown that the required proofs of loss were not furnished and where an appraisal was demanded but none was had and where there was no showing that proofs of loss requirement was waived by insurer or that the failure to procure an award of the appraisers was due to the appraiser appointed by the insurer, the insured could not recover.

[Judgment for plaintiff below. Here reversed in favor of company.]

Modern Homes, Inc. v. Atlas Assur. Co. (N. J. S. C.):

108 Atlantic Reporter (March 11, 1920) 869.

Action on Policy—Cancellation—Unearned Premiums:

Where a fire policy containing the standard cancellation clause was canceled by insurer, and insured upon receiving notice of cancellation at once acquiesced therein, surrendered policy to agent without demanding refund of old premium, depending upon agent's assurance that he would obtain other insurance and apply the over paid premium upon a new policy, insured could not recover upon the old policy, though the agent failed to procure a new one, if the old policy had been canceled by mutual agreement and insured had waived the tender and return of unearned premium as condition precedent to cancellation.

[Judgment for plaintiff below. Here reversed in favor of company.]

Insurance Co. of North America v. McWilliams (Tex. C. C. A.):

218 Southwestern Reporter (March 17, 1920) 80.

Action on Policy—Fraudulent Concealment—Evidence:

In an action on a fire policy, under the evidence the jury was warranted in finding that insured did not fraudulently conceal the existence of a sheriff's certificate to the property.

Same—Amount Paid on Concurrent Insurance—Credit:

In an action on a policy of fire insurance where insurer pleaded that the holder of a sheriff's certificate collected on a prior policy in force at the time of fire, the sum of \$1,000, and that the amount so paid should be deemed to have discharged the amount due plaintiffs for insurance on the building, and the proofs showed that the holder of sheriff's certificate received on the former policy \$300, it was *Held*, That the court's instruction that the \$300 should be deducted from the amount which the jury might allow plaintiffs was consistent.

Same—Prohibitive Risks—Evidence:

Where the fire policy expressly permitted previous insurance and the existence of the sheriff's certificate to the property was disclosed to the company's recording agent by insured as soon as its existence was discovered a few days after the issuance of the policy, it was *Held*, That the jury was warranted in finding against the insurer's contention that if the facts pertaining to previous insurance and sheriff's certificate had been known at the home office or by the recording agent, the risk would have been classified as prohibitive and the policy canceled.

Same—Same—Same:

Evidence as to what insurer's secretary at home office would have done with reference to cancellation of policy if he had known of previous insurance and of existence of sheriff's certificate to the property was inadmissible.

[Judgment for plaintiff below. Here affirmed against company.]

Collins et al. v. Iowa Mfrs.' Ins. Co. (Ia. S. C.):

176 Northwestern Reporter (March 19, 1920) 253.

Action on Policy—Waiver—Authority of Agent:

In view of Ia. Code 1897, Sec. 1750, an agent of a foreign insurance company who was authorized to do business in Iowa and to issue policies, etc., had authority to attach a rider to a policy of fire insurance waiving the provision of the policy forbidding additional insurance save in companies authorized to do business in the state.

Additional Insurance—Knowledge of Agent Imputed to Company:

Company was charged with agent's knowledge of the rider attached to a fire policy and of the fact that insured had procured additional insurance in companies not authorized to do business in the state.

Same—Same—Estoppel:

Where an agent authorized to issue policies, etc., had knowledge that policyholder had additional insurance in companies not authorized to do business in the state of Iowa and with such knowledge added to the policy a rider authorizing such insurance, the insurer was estopped to assert the invalidity of the policy because of the additional insurance at the time the rider was attached.

Same—Insurer's Knowledge of Other Insurance—Burden of Proof:

In an action on fire policy, where insurer defended on the ground that insured had procured additional insurance in companies not authorized to do business in Indiana and insured relied on the rider permitting additional insurance attached by the general agent of insurer, instruction which cast on insured the burden of showing the insurer's knowledge in some way independent of the knowledge of its

authorized agent were erroneous and warranted the granting of a new trial.

[Judgment in accordance with opinion.]

A. A. Cooper Wagon & Buggy Co. v. National-Ben Franklin Ins. Co. (1a. S. C.):

176 Northwestern Reporter (March 19, 1920) 309.

Action on Policy—Presumption of Delivery—Rebuttal:

Where letter is properly addressed and mailed and postage prepaid, there is a presumption that it was received by the addressee, but such presumption may be rebutted by evidence that it was not in fact received.

Same—Proofs of Loss—Necessity:

Though failure to furnish proofs of loss within the time stipulated in the fire policy will not defeat recovery, the furnishing of proofs of loss, unless waived is a condition precedent to the maintenance of an action on the policy.

Same—Same—Waiver:

Where insurer denied liability under a policy of fire insurance and refused to pay the amount of loss claimed, the provision that no suit can be brought until a certain time after the loss or after proofs of loss were furnished was waived, and the right of action on the policy accrued immediately.

Same—Same—Same—Interest:

Where policy of fire insurance provided that loss shall be paid within 60 days after the furnishing of notice of proofs of loss, the insured is entitled to interest from the expiration of such time as a matter of right; but where insurer denies all liability, it waives its right to withhold payment for the 60 days period and interest on the sum recoverable will run from the date of the loss.

[Judgment for plaintiff below. Here reversed in favor of company.]

Home Ins. Co. of New York v. Roth (Ky. C. A.):

218 Southwestern Reporter (March 21, 1920) 471.

Decedent's Estate—Mortgage—Insurance Proceeds:

Executrix had the right to pay the decedent's mortgage notes with the insurance proceeds.

Same—Same—Same:

Insurance proceeds when paid stood in the place of the property insured as security for mortgage debt.

Same—Same—Same:

The devisees of mortgaged property were not entitled to exoneration where the proceeds of insurance was applied to the extinguishment of the mortgage indebtedness.

Same—Same—Same:

Where the devisee's mortgagees accepted payment out of the insurance proceeds, they waived any right to have the mortgage paid from other funds.

Same—Same—Same:

Insurance money on decedent's buildings not required for the payment of the mortgage thereon remained standing as a substitute for the destroyed buildings and went to the devisees.

Same—Insurance—Insurable Interest:

Great liberality is indulged in determining whether insured has anything at hazard in the subject matter of the insurance he must have such a right or interest therein as the law will recognize and protect; this must be of such a character that the destruction of the property will have a direct effect on it and not a remote and consequential effect.

Same—Same—Same:

Where testatrix's \$500 mortgage did not cover buildings on her land the holder of such mortgage had only an indirect and remote and not an insurable interest in such buildings.

[Judgment in accordance with opinion.]

In re. Reynolds' Estate (Vt. S. C.):

109 Atlantic Reporter (March 25, 1920) 60.

Policy—Explosion—Recovery:

Manufacturers of explosives insured their buildings and the contents thereof by policies of insurance, whereby the insurer agreed to pay the sums named if the property or any part thereof should be destroyed or damaged by fire. Each policy contained a condition to the effect that the insurance would not cover loss or damage by explosion, except explosion of illuminating gas and a memorandum endorsed in these words: "This policy does not cover loss or damage by explosion nor loss or damage by fire following any explosion unless it be proved that such a fire was not caused directly or indirectly thereby or was not the result thereof." Fire broke out in the works of the manufacturers. After much damage had been done, a quantity of tri-nitro-toluol exposed to the heat of the fire, exploded and destroyed the buildings and their contents. *Held*, That as to the damage caused by the explosion the insurers were exempted from liability by the conditions and memorandum, although the explosion occurred in the course of a fire.

Same—Representations of Agent—Estoppel:

During negotiations between explosive manufacturers and an agent of insurance company for the issue of a fire policy, the manufacturers asked the agent whether the company's ordinary fire policy covered damage done by an explosion following a fire. The agent in reply quoted the terms or condition mentioned above and informed the manufacturers that damage caused by an explosion resulting from the fire would be covered by the company's ordinary fire policy, save that loss or damage as specified in the conditions to be expected. The manufacturers understood the qualification to refer only to an explosion due to hostile action, "loss or damage occasioned by foreign enemy," being one of the excepted risks in the condition. *Held*, That the representa-

tion by the agent was a representation, not of fact, but of law, namely as to the meaning and effect of the condition—and that therefore the insurance company when sued on the policy was not estopped from contending by way of defense that the loss was caused by an explosion.

[Judgment in accordance with opinion.]

In re. Arbitration between Hooley-Hill Rubber and Chemical Co., Ltd., and Royal Ins. Co., Ltd. (K. B. Div.):

[1920] 1 K. B., The Law Reports (March) 257.

Policy—Cancellation—Notice to Broker:

Insurer's notice of cancellation by insurer to broker authorized to procure insurance for owner of property was ineffective, unless such broker was continuing agent of insured, and where there was a disputed issue of fact as to the agency for insured to receive notice of cancellation, a directed verdict was erroneous.

[Judgment in accordance with opinion.]

National Union Fire Insurance Company v. Macon Hardwood Lumber Co. (Ga. C. A.):

102 Southeastern Reporter (March 27, 1920) 180.

Policy—Reinsurance—Endorsement:

Where a clause of a general form of policy provided that "liability for reinsurance shall be as specifically agreed herein," terms of endorsement placed on policy of reinsurance by the immediate parties thereto are controlling, in case of inconsistency between them and the terms of the general form.

Same—Same—Same:

An endorsement on a policy of reinsurance made bona fide settlement by original insurer binding on reinsurer.

Same—Same—Rubber Stamp:

California Civil Code Sec. 1651, makes rubber stamp reinsurance clause on policy controlling over printing in policy.

[Judgment in accordance with opinion.]

Royal Ins. Co. of Liverpool, England v. Caledonian Ins. Co. of Edinburgh, Scotland, (Cal. S. C.):

187 Pacific Reporter (March 29, 1920) 748.

Agent—Commission—"Rebate":

Under Montana statute the division by fire insurance agent of his commission personally with an officer of an insurance company was "illegal and criminal rebate."

Slander—Truth of Statement—Defense:

In a slander suit, statement of defendant that plaintiff insurance agent had made a criminal rebate, having been shown to be true there could be no recovery.

[Judgment in accordance with opinion.]

Smith v. Kleinschmidt (Mont. S. C.):

187 Pacific Reporter (March 29, 1920) 894.

Fire Insurance—Parol Contract—Evidence:

An oral contract of insurance made with an insurance agent representing several companies, but the company to take the risk not being designated is unenforceable, particularly against a company that had forbidden such agent to write any such risk.

Action on Oral Contract—Agent's Statements after Fire—Evidence:

Testimony that insurance agent who made parol agreement to furnish plaintiff insurance without designating any particular company on the day after the fire told plaintiff that if he had written a policy on the day of the oral agreement he would have written it in defendant company, was not admissible and not a part of the *res gestae*.

[Judgment for company below. Here affirmed in favor of company.]

Grimes v. Virginia Fire & Marine Ins. Co. (Tex. C. C. A.):

218 Southwestern Reporter (March 31, 1920) 810.

Action on Policy—Fraud—Evidence:

In an action on a fire policy involving the question whether plaintiff procured the policy through fraudulent misrepresentation, evidence that insurer's home office did not have notice of the issuing of the policy until after the fire, was admissible.

Same—Same—Same:

In an action on a fire policy involving the question whether insured had induced insurer's agent to write the policy under false statements, one of which related to previous fires, cross examination of plaintiff as to whether he had any fires prior to the making of his application, a few days before the fire which destroyed the property, was proper.

[Judgment for company below. Here affirmed in favor of company.]

Malita v. Globe & Rutgers Fire Ins. Co. (N. Y., App. Div.):

180 New York Supplement (April 5, 1920) 650.

Policy—Ambiguity—Construction:

Where an insurance contract furnished and prepared by the insurance company is ambiguous, it will be construed most favorably to the insured.

Same—Produce in Barn—Coverage:

Where a policy of fire insurance contained the clause "Produce in buildings 20 ton feed \$1,000.00," of which clause the words "Except produce in buildings," were inserted in pen, it was *Held*, That the policy was not restricted to the feed on hand but covered a loss of produce in a barn destroyed some time after the feed had been used, as the

policy was to run for 5 years and it was quite apparent that it was not limited to the particular feed.

[Judgment for company below. Here reversed against company.]

Miller v. Danby Co-op. Fire Ins. Co. (N. Y., App. Div.):
180 New York Supplement (April 5, 1920) 675.

Action on Policy—Additional Insurance—Violation of Policy:

Additional insurance procured by insured without consent of insurer was another "contract of insurance * * * on property covered in whole or in part by this policy."

Policy—Concurrent Insurance—Conflict:

The policy of fire insurance permitting certain concurrent insurance did not conflict with a provision invalidating the entire policy in case another contract of insurance was taken on the property without the insurer's consent.

Same—Additional Insurance Clause—Validity:

Rev. Stat. 1911, Art. 4874, making a fire policy a liquidated demand against insurer for full amount of policy in event of total loss, does not invalidate the clause forfeiting the policy in case the insured takes out additional insurance without the consent of the insurer.

Same—Same—Knowledge of Insured:

The clause in a fire insurance policy forfeiting policy in case insured takes out additional insurance without consent of insurer is not affected by insured's ignorance of the clause in the absence of fraud or mistake.

Policy—Forfeiture—Effect on Mortgagee:

Where a mortgagee was made the owner of a fire policy as his interest might appear with the provision that his interest should not be invalidated by any act or negligence of mortgagor, forfeiture of mortgagor's rights by taking out additional insurance in violation of policy did not authorize insurer to pay only three-fourths of loan to mortgagee under the clause restricting recovery to such amount in case of other insurance.

Same—Mortgage—Subrogation:

Where a policy of fire insurance was forfeited as to mortgagor through his taking out other insurance, but insurer was required to pay the loss to mortgagee, under an independent contract in the mortgage clause of the policy, it was *Held*, That insurer was subrogated to the mortgagee's rights to the extent of the mortgage debt at the time the insurer should have paid the loss to the mortgagee.

[Judgment in accordance with opinion.]

Home Ins. Co. v. Boatner (Tex. C. C. A.):

218 Southwestern Reporter (April 7, 1920) 1097.

Policy—Proof of Loss—Waiver:

Where subsequent to the fire defendant insurer, insured and the only other insurer entered into a non-waiver agree-

ment for investigation of the fire, the clause of the policy requiring proof of loss, showing other insurance, interest, statement of loss and knowledge of origin of fire, was waived.

Policy—Ownership—Evidence:

Where there was a contract for the sale of insured's goods and the evidence showed an intention that title was not passed until inventory was taken and all preliminary matters agreed on and bill of sale given and a fire occurred before all the goods were invoiced, there was no change in ownership, prohibited by fire insurance policy.

[Judgment for plaintiff below. Here affirmed against company.]

German-American Ins. Co. v. Shepherd et al. (Ind. App.):
126 Northeastern Reporter (April 13, 1920) 447.

Action on Policy—Use and Occupancy—Forfeiture:

A removal from a farm to a city home, of a member of a Farmers' Mutual Aid Association, did not work an automatic forfeiture of membership or of insurance in the absence of such a clause in the contract of insurance, articles, by-laws or constitution governing the association.

Same—Vendor's Lien—Insurable Interest:

The owner of a vendor's lien on real estate has an insurable interest therein, as there is no provision that insured shall own the exclusive or unconditional title to the property.

[Judgment for plaintiff below. Here affirmed against association.]

Farmers Mutual Fire Ins. Assn. v. Hodges (Ark. S. C.):
219 Southwestern Reporter (April 14, 1920) 13.

Policy—Oral Renewal Contract with Agent—Validity:

An oral contract with an agent of insurer for the renewal of the policy of fire insurance at its expiration is binding on the insurer, though it was not reduced to writing until after the fire.

Renewal—Knowledge of Fire—Estoppel:

Where a renewal policy was issued by insurer with knowledge of circumstances of a loss by fire, and insurer demanded payment of premium which it receipted and retained, it was estopped from denying liability on the loss.

Renewal Policy—Differences in Terms—Recovery:

That a renewal policy differed from the original fire policy in the period of time it was to run and the amount of the premium, did not defeat recovery.

Same—Same—Presumption:

Where there is no agreement to the contrary there is a presumption that when a contract to renew a policy is made it contemplates that the same terms, time and premium which existed in the original policy should apply to the renewal.

Same—Right of Action:

One may maintain an action upon a contract to renew a fire policy.

Same—Payment of Premium—Necessity:

The payment of a premium is not essential to the validity of a renewal contract of fire insurance and in determining whether the premium has been paid or waived, the habit, custom and course of dealing between insured and insurer's agent may be considered.

[Judgment for plaintiff below. Here affirmed against company.]

American Central Ins. Co. v. Robinson, (Tex. C. C. A.):
219 Southwestern Reporter (April 14, 1920) 277.

Action against Wrong-Doers—Consolidation of Actions by Several Insurers:

Where several insurance companies each paid a portion of the loss of a fire claimed to have resulted from the negligence of a railroad company, under North Carolina statute, it was proper to consolidate the several actions of the several insurance companies.

Same—Parties:

The owner of insured premises is a necessary party to an action by insurer against a third person responsible for the fire.

Fire Insurance—Negligence of Third Person—Subrogation:

Where a third person, through negligence causes a loss, a fire insurance company is, under the principles of equity entitled to subrogation to the rights of the insured against such third person to the extent it has paid of the loss.

[Judgment in accordance with opinion.]

Lumbermen's Mut. Ins. Co. v. Southern Ry. Co. (N. C. S. C.):

102 Southeastern Reporter (April 17, 1920) 417.

Fire Insurance—Landlord and Tenant—Subrogation:

Where a landlord was not liable for damage to the tenants goods caused by the bursting of a sprinkler system, there could be no release of the landlord which would impair the rights of the tenants fire insurer to subrogation.

[Judgment in accordance with opinion.]

Franklin Fire Ins. Co. of Philadelphia v. Weinberg (N. Y. S. C.):

181 New York Supplement (April 19, 1920) 15.

Action on Policy—Proof of Loss—Recovery:

Where the owner of insured property failed to return preliminary proof of loss to insurer as required by the policy, there could be no recovery.

Proof of Loss—Mortgage—Recovery:

Where a union mortgage clause was attached to a policy, making the loss payable to the holder of a trust deed, it was

Held, That the policy contained two contracts, one with the owner of insured property and the other with the mortgagee, and the failure of the owner to furnish preliminary proof of loss required by the policy would not prevent recovery by mortgagee.

Policy—Ambiguity—Construction:

Uncertain language in a policy of insurance should be construed most strongly against insurer and interpreted, if possible, so as to avoid forfeiture.

[Judgment for company below. Here reversed against company.]

Seccombe v. Glens Falls Ins. Co. (Cal. D. C. A.):

188 Pacific Reporter (April 26, 1920) 305.

Action on Policy—Iron-Safe Clause—Knowledge of Agent Imputed to Company:

Where insurer's agent knew that insured did not keep the iron safe required by a clause of the policy such knowledge is imputed to the company, and if insurer delivered the policy and collected and retained the premiums after such agent's knowledge, it waived the forfeiture for violation of such iron-safe clause.

[Judgment for plaintiff below. Here affirmed against company.]

Rosenthal-Sloan Millinery Co. v. Hanover Fire Ins. Co. (Mo. C. A.):

219 Southwestern Reporter (April 28, 1920) 669.

Action on Policy—Wilful Destruction of Property—Burden of Proof:

Where in an action on a fire insurance policy the insurance company pleaded that insured wilfully destroyed the insured property, it was incumbent on defendant company to establish the truth of the defense beyond a reasonable doubt.

[Judgment in accordance with opinion.]

Cottam v. National Mutual Insurance Co. (Ill. App.):

14 Illinois Law Review, Appellate Court Digest (April, 1920) 104.

Action on Policy—Explosion—Recovery:

In an action on fire policy which exempted insurer from liability from loss caused by explosion unless fire ensues, it was *Held*, That insurer notwithstanding a further clause in the policy that, if the building shall fall as a result of fire, all insurance shall immediately cease, is liable for damage resulting from the fire ensuing upon explosion, though the explosion caused the building to fall.

Same—Same—Measure of Recovery:

Notwithstanding the fire policy exempted insurer from liability for loss from explosion insured could recover the whole loss where the explosion occurred after the commencement of the fire and was a resulting incident thereof.

Same—Exemption—Burden of Proof:

Where a policy of fire insurance exempted insurer from liability from explosion in an action on such policy, fire and loss falls within the exemption in the policy; but, if such burden is sustained, and there is a showing that an explosion occurred prior to the fire, it is incumbent upon insured to show the damage suffered from the resulting fire.

Policy—"Premises"—Definition:

That 150 gallons of gasoline was kept in an underground tank on a lot adjacent to the lot upon which the insured property was situated, and in violation of the provision of the policy that company "shall not be liable for loss while there be used or allowed on the premises gasoline exceeding one quart"; the word "premises" as employed in fire insurance policy means no more than the insured building or the building which contains the insured property and cannot be *Held*, To be coextensive with the lot upon which the building is constructed or a lot contiguous thereto.

Same—Gasoline—Increased Hazard:

The fire insurance company cannot escape liability on the ground of increased hazard resulting from the keeping of 150 gallons of gasoline in an underground tank in an adjacent lot, where the hazard was not increased, over and above that existing at the time of the issuance of the policy.

Same—Same—Same:

The fire policy is issued to protect the insured against existing risks which are contemplated and covered by the premiums and, in the absence of fraud or concealment, the hazard in respect to the risk assumed, cannot be enhanced or enlarged by a mere continuance of conditions and uses existing at the time the policy was issued.

Same—Same—Same:

The keeping of 150 gallons of gasoline on adjacent premises such premises not being under the control of insured, would not furnish ground on which insurer could escape liability under increased hazard, as the increase must have been within control of insured.

Action on Policy—Increased Hazard—Burden of Proof:

In an action on a policy of fire insurance, the burden of proving that the hazard was increased so as to avoid policy is upon insurer.

Action on Policy—Assignment—Parties:

Where the insured assigned sums due under fire insurance policy authorizing the assignee to adjust the claim and apply the proceeds in settlement of debts owing by the insured such assignee secured no personal interest and the insured remained the real party in interest and was entitled to sue on the policy.

[Judgment for company below. Here reversed against company.]

Rossini v. St. Paul Fire & Marine Insurance Co. of St. Paul, Minn. (Cal. S. C.):

188 Pacific Reporter (May 3, 1920) 564.

Policy—Divisibility—Change of Ownership:

Where the policy insured a dwelling, furniture and wearing apparel, as well as a barn and the contents thereof, in separate amounts, insured may recover for the loss of the furniture and wearing apparel, notwithstanding his sale of the barn and dwelling, where the property when destroyed, was still in the dwelling; insured not yet having surrendered possession thereof.

[Judgment for plaintiff below. Here affirmed against company.]

Westchester Fire Ins. Co. of New York v. Looney (Tex. C. C. A.):

219 Southwestern Reporter (May 5, 1920) 1116.

Action on Policy—Agency—Broker:

An insurance broker, like other brokers, is primarily the agent of the first person who employs him and is, therefore, ordinarily agent of the insured.

Same—Same—Same:

An insurance agent within the scope of his actual authority whether in trade parlance described as general, special, issuing, local, or soliciting, is the agent of insurer.

Same—Same—Same:

A person may be both an insurance broker and an insurance agent, and may at different times act in both capacities.

Same—Same—Question for Jury:

Whether an insurance broker, who was also insurer's agent, having authority to issue insurance in a certain territory, not embracing the insured property, acted as insurer's agent in procuring the issuance of insurance by another authorized agent in doing which, he made materially misrepresentations, was a question for the jury.

Same—Same—Evidence:

The fact that an insurance broker was the agent of insured could be shown by the broker's testimony but not by his acts and declarations.

[Judgment for company below. Here affirmed in favor of company.]

International Paper Co. v. General Fire Assur. Co. (U. S. C. C. A.):

263 Federal Reporter (May 13, 1920) 363.

Fire Insurance—Voluntary Payment of Another's Liability—Subrogation:

Where the plaintiff insurance company was under no legal liability to pay a loss resulting from defendant railroad company's engine, and the payment so made by it was purely voluntary, the fire insurance company is not entitled to be subrogated to a right which the payee of the loss may have against such railroad company.

[Judgment for defendant below. Here affirmed against company.]

Scandinavian Mut. Ins. Co. v. Chicago B & Q. R. Co. (Neb. S. C.):

177 Northwestern Reporter (May 14, 1920) 178.

Action on Policy—Proof of Loss—Evidence:

Proofs of loss under a policy of fire insurance were admissible only to show compliance with the terms of the policy.

Same—Tender of Premium—Same:

In an action on a policy of fire insurance providing that if the property was or should become encumbered by a chattel mortgage the policy would be void, the exclusion of testimony of defendant insurer's agent as to what effort he had made to find insured before the time he tendered premium back to him on discovering there was a chattel mortgage on the property, was reversible error.

Same—Same—Same—Testimony before Fire Marshal:

In an action on a policy of fire insurance, a properly authenticated transcript of the testimony of plaintiff before the state fire marshal investigating the fire is admissible in evidence to contradict or impeach plaintiff as a witness.

Same—Waiver—Pleading:

In an action on a policy of fire insurance a paragraph of reply averring that defendant insurer by and through its duly authorized agent, waived each and every provision condition and requirement set forth was sufficient as an averment that such agent had either the actual or apparent authority.

[Judgment for plaintiff below. Here reversed in favor of company.]

Ohio Farmers' Ins. Co. v. Dobbs (Ind. App.):

126 Northeastern Reporter (May 18, 1920) 869.

Action on Policy—"Broker"—"Insurance Agent":

Wash. Stat. defining an "insurance agent" as a person duly appointed and authorized by an insurance company to solicit insurance, etc., and an insurance "broker" as any person not an appointed agent for the company who acts or aids in negotiating insurance for others and requiring agents and brokers to obtain a license, one not an appointed agent of the company, who acted for plaintiff in procuring insurance was a broker, though he had no license; or if not a broker, he was nevertheless her agent where the insurer did not know that he had no license.

Same—Fraudulent Representations—Instructions:

In an action on a fire insurance policy defended on the ground of fraudulent representations, the court properly instructed the jury that fraud and deceit must be established by clear and convincing evidence, and that fraud was to be proven by potent and strong evidence because it is the policy of the law to deal with men on the basis of their honesty and with the presumption that men are dealing with one another in a spirit of fairness and honesty.

Same—Same—Estoppel:

Where insured in procuring insurance on an automobile made certain misrepresentations as to the model, insurer was not estopped from relying on such misrepresentations by a subsequent conversation of insured with agent.

Same—Same—Presumption:

Under Wash. Stat. providing that misrepresentation or warranties in negotiations for insurance shall not be deemed material to defeat the policy unless made with intent to deceive, where plaintiff's husband represented that an automobile was a 1911 model with knowledge at the time that it was a 1910 model, and that it was a new car, knowing it had been used before his wife's purchase of it, a presumption of intention to deceive arises which was not overcome by his testimony that he thought the car was as good as new and that he either forgot the date of manufacture or considered there was no difference.

Same—Evidence—Judgment:

In an action on a fire insurance policy, the evidence showed misrepresentation in procuring the insurance and there was insufficient evidence to overcome the presumption of intent to deceive so as to make a question for the jury, defendant's motion for judgment notwithstanding the verdict should be granted.

[Verdict for plaintiff below. Here reversed in favor of company.]

Day v. St. Paul Fire & Marine Ins. Co. (Wash. S. C.):
189 Pacific Reporter (May 24, 1920) 95.

Action on Policy—Default in Premium—Contract:

Where a fire insurance contract provides that the insurer shall not be liable for loss occurring while the payment of the insurance premium note is in default, such provision is reasonable and must be enforced according to its terms.

Same—Notice—Agent:

Notice by the holder of a fire insurance policy to a soliciting agent and collector of debts for the insurance company, informing him that the insured had suffered a loss, was not sufficient notice to the company, particularly when agent whose powers were thus limited did not inform the company.

Same—Default in Premium—Revival:

Payment of the defaulted premium note after the maker of the note suffered a fire loss did not render the insurance company liable for the loss where the insurance company provides that such payment merely revives the insurance, such revivor to begin at the time of payment.

Same—Same—Waiver:

Where insurer accepted a promissory note for a contract of fire insurance and furnished insurance thereunder until default was made in the payment of the note, it did not waive its right of no liability for a loss occurred after such default by temporarily retaining the note until the insurance policy is surrendered.

[Judgment for plaintiff below. Here reversed in favor of company.]

Elkelberger v. Ins. Co. of North America (Kan. S. C.):
189 Pacific Reporter (May, 24, 1920) 139.

Policy—Reformation—Statute:

Ark. Stat. making a fire insurance policy in case of total loss, a liquidated demand for the face thereof, becomes part of every fire insurance policy written within the state of Arkansas, and therefore it was not error to refuse to reform a policy by writing therein a clause embodying such provision.

[Judgment for company below. Here affirmed in favor of company.]

E. O. Barnett Bros. v. Western Assur. Co. (Ark. S. C.):

220 Southwestern Reporter (May 26, 1920) 465.

Action on Policy—Admitted Loss—Directed Verdict:

In an action on a policy of fire insurance, a directed verdict was properly denied where it was admitted that part of the loss was within the risks insured against.

Same—Explosion—Recovery:

In an action on a fire policy providing against liability for loss caused by explosion unless fire ensues and in that event for the damages by fire only if a hostile fire, which in its natural course would totally or partially destroy the insured property, precedes and causes the explosion, it was *Held*, That insurer is liable for all of the damage caused by either the fire or the explosion.

Same—Exemption—Burden of Proof:

In an action on a fire policy providing against liability for loss caused by explosions, the burden is on insurer to show that the damages claimed fall within the exceptions.

Same—"Explosion"—Recovery:

Where the flame of a match set fire to inflammable natural gas presumed to have escaped from the pipes and the fire spread to the insured property before a violent explosion occurred accompanied by a loud report and the wrecking of the building, the damages were covered by the policy insuring against fire but excepting the insurer from liability for damages from explosion unless fire ensued and in that event for the damages by fire only, as the mere burning of the gas without any sudden, violent and forcible expansion was not an explosion according to common understanding.

[Judgment for plaintiffs below. Here affirmed against company.]

New Hampshire Fire Ins. Co. v. Rupard et al. (Ky. C. A.):

220 Southwestern Reporter (May 26, 1920) 538.

Action on Policy—Use and Occupancy—Warranty:

The words "two thousand—upon the 2½ story frame slate roof building, occupied and to be occupied as a dwelling house and situate on the south side of,—etc.," in a policy of fire insurance, do not constitute a warranty that the property shall be occupied only as a dwelling house while the risk endures, especially in view of the fact that the policy contains the following: "This entire policy shall be void ***** if the hazard be increased by any means within the control or knowledge of the insured."

Same—Proofs of Loss—Waiver:

In an action on a fire policy where the evidence is conflicting as to a conversation between an agent of the insurer who was fully authorized to adjust a loss under the policy and agent of the insured, the waiver of proof of loss must be referred to the jury.

[Judgment for plaintiff.]

Krajnetz v. Milwaukee Mechanics' Ins. Co. (Pa. C. P., Northampton Co.):

77 Legal Intelligencer (May 28, 1920) 421.

Policy—Iron-Safe Clause—Forfeiture:

Where insured took no inventory of his stock in store except at the beginning of business about three months before the date of his policy, and thereafter at various times made large additions to his stock by new purchases, and continued all the time to make sales therefrom at retail, keeping his accounts of such sales on slips which were destroyed at the end of each week and only the figures showing the amount of weekly sales were transcribed into a book, he did not substantially comply with the iron-safe clause of his fire insurance policy and his policy was thereby rendered void.

[Judgment for company below. Here affirmed in favor of company.]

Albert v. Colonial Fire Underwriters of Hartford, Conn. (W. Va. S. C. A.):

102 Southeastern Reporter (May 29, 1920) 859.

Action on Policy—Ownership—Land Contract:

There was no breach of the fire policy condition of ownership of the property in insured, because insured was in possession merely under a contract to purchase the property on monthly installments, though owing to its informal character he and the seller of the property subsequently entered into a more formal and complete agreement regarding the sale.

Same—Same—Proofs of Loss—Waiver:

Where fire insurer's agent after loss stated to insured that he would attend to giving notice to the company and company's adjuster appeared and instructed insured regarding the making of a plat of rooms with inventory of their contents, the insurance company waived its policy provision for preliminary proof of loss within 60 days.

[Judgment for plaintiff below. Here affirmed against company.]

Ramirez v. United Firemen's Ins. Co. of Philadelphia et al. (Cal. D. C. A.):

189 Pacific Reporter (May 31, 1920) 309.

Policy—Ownership—Forfeiture:

The stipulation in an insurance policy that in case there should be a change of title or possession of the property or if the same should be removed to a new location the policy should void, does not render the policy void except at the option of the insurance company.

Action on Premium Note—Cancellation—Defense:

The provision in a policy for the surrender by the insured of a policy for cancellation is not available as a defense to a note given for the premium where the insured did not offer the return of the policy or demand its cancellation until after the suit had been commenced.

[Judgment in accordance with opinion.]

American Insurance Company v. Cassity (Ill. App.):

15 Illinois Law Review, Appellate Court Digest
(May, 1920) 16.

Corporation—Stock Subscription—Liability:

An insurance company may make a valid contract of subscription and may incur indebtedness for certain purposes before it is authorized to do an insurance business and a subscriber's liability so far as creditors and those occupying the place of creditors is concerned is not effected by the failure of the company to secure from the insurance commissioner a certificate authorizing it to begin business as an insurance company, or by the fact that the company went into the hands of a receiver and the original project was abandoned.

[Judgment in accordance with opinion.]

Levassor et al. v. Metropolitan Fire Ins. Co's Receiver
(Ky. C. A.):

220 Southwestern Reporter (June 2, 1920) 752.

Foreign Company—Business Done without Certificate of Authority:

Business done with foreign insurance corporation prior to the issuance of authority required by Tex. Stat. cannot be validated by a subsequent issuance of a certificate.

Same—Same:

An assignment to an insurer of a cause of action prior to the issuance to insurer of a certificate of authority required by Tex. Stat. is invalid.

Corporation—Charter—Construction:

A charter of an insurance company authorizing it to "grant insurance against loss or damage which may be caused to all kinds of property by the elements***** including fire***** and against the hazards of inland navigation and transportation," authorized the company to insure shippers of live stock against the hazards of transportation with the agreement that upon the payment of losses such shipper would assign their cause of action to the insurer, who should be subrogated to all the rights therein.

[Judgment for company below. Here reversed against company.]

Galveston H. & S. A. Ry. Co. v. Hartford Fire Ins. Co.
(Tex. C. C. A.):

220 Southwestern Reporter (June 2, 1920) 781.

Agent of Foreign Company—Premium Tax—Reinsurance:

The agent for a foreign fire insurance company was not chargeable with the tax on premiums on contracts of rein-

surance, but where the agent made a voluntary payment of such taxes, the same cannot be allowed as an off-set to other taxes claimed.

Same—Same—Same:

Under Greater New York Charter, an agent of a foreign fire insurance company must pay a tax of 2 percent on premiums on fire policies effected on property within the city without deduction of premiums on reinsurance effected by him as such agent.

[Judgment in accordance with opinion.]

Drennan, Fire Com'r v. Hampton (N. Y., App. Div.):

181 New York Supplement (June 7, 1920) 777.

Action on Policy—Warehouseman—Insurable Interest:

A warehouseman has an insurable interest in goods to which he has no title and may recover for their loss in its entirety under a policy insuring goods held "in trust or on commission," or "sold but not removed."

Same—Successive Owners as Parties Insured:

It is not forbidden by the law that the policy should be so framed as that insurance shall be inseparably attached to the property meant to be covered so that successive owners during the continuance of the risk shall become in turn the parties really insured.

Same—Contract—Parties:

Under a policy insuring goods held "in trust or on commission," or "sold but not removed," issued to and in the name of a warehouseman, for the benefit of the true owner, such true owner may sue and recover in the name of the warehouseman.

[Judgment for plaintiff against company.]

Lewis et al. v. Home Ins. Co. (N. Y., Sp. Tr.):

181 New York Supplement (June 7, 1920) 839.

Action on Policy—Assignment—Consent of Insurer:

A fire insurer was under no obligation to notify a transferee of the property insured to whom the policy had been assigned without the consent of the insurer of the termination of the agency of the firm writing the insurance so that an oral agreement made by one of the firm subsequent to such agency termination that slips would be furnished consenting to the assignment would not constitute waiver by insurer; the assignee having no knowledge of the former agency.

Same—Same—Same:

Where an owner of property insured against fire conveyed it and assigned the policy to the purchaser without the consent of the insurer, the act of one of the firm of agents which had originally written the policy, orally consenting to such assignment, would not estop insurer from setting up want of consent where the agent at the time did not represent the insurer and the policy provided that no agent could waive any condition of the policy.

Same—Same—Proof:

In an action on a fire insurance policy brought by a vendee of the property to whom the policy had been assigned without consent of the insurer, a judgment for plaintiff will be reversed in the absence of proof of such assignment; an inference of the assignment arising from the possession of the policy by plaintiff is insufficient where it did not appear that plaintiff knew of the existence of the policy until the trial took place.

[Judgment in accordance with opinion.]

Greentaner et al. v. Connecticut Fire Ins. Co. of Hartford, Conn. (N. Y. C. A.):

127 Northeastern Reporter (June 8, 1920) 249.

Application—Notice of Rejection—Recovery:

Where plaintiff's son had previously acted in the matter of obtaining insurance by carrying a message to his mother that the policy was about to expire, the local agent of the insurer was justified in mailing to the son notice that the application in its present form would be rejected, and where the son failed to open the letter and the property was burned before such application was corrected there could be no recovery.

[Judgment for company below. Here affirmed in favor of company.]

Feldmeier v. Springfield Fire & Marine Ins. Co. (Wis. S. C.):

177 Northwestern Reporter (June 11, 1920) 583.

Policy—Cancellation—Condition Precedent:

In construing a New York Standard policy of fire insurance, it was *Held*, That where an insurance company seeks to cancel a policy by giving five days' notice, the return or tender by the company of the unearned portion of the premium is a condition precedent to the cancellation of the policy.

Same—Same—Same:

Under a provision in a policy for the return of the pro rata portion of the unearned premium when the policy is canceled by the company by giving notice, a draft drawn by the insurance company upon itself is not a sufficient payment or tender in the absence of anything to show that insured waived his right to require the return or tender of the unearned portion of the premium.

Action on Policy—Increase of Risk—Burden of Proof:

In an action on a fire insurance policy where insurer averred a breach thereof by insured, in that he removed from the premises and by his own act changed the occupancy from that of owner to tenant occupancy and thereby increased the risk of loss and damage in the insured property and the hazard of the insurer, and the reply admits the change of occupancy but denies that it increased the risk or hazard, the burden of proof is on the defendant in-

suror to show by a fair preponderance of the testimony that the change in occupancy increased the hazard.

[Judgment for plaintiff below. Here reversed in favor of company.]

First Natl. Fire Ins. Co. of the United States v. Burnett
(Fla. S. C.):

84 Southern Reporter (June 12, 1920) 382.

Unincorporated Association—Joint and Several Liability:

Where a number of individuals and firms became members of an association for mutual protection against fire losses, being a scheme of mutual insurance, they were jointly and severally liable as principals to third persons who sold the association supplies and rendered service and creditors having claims for premiums for risks of the association reinsured.

Same—Application—Contract:

Where an unincorporated association was formed for the purpose of mutual protection against fire loss, applications filed by the persons and firms becoming members thereof must be construed along with policies issued in order to determine the liability of any member for the loss of another member.

[Judgment in accordance with opinion.]

Sergeant v. Goldsmith Dry Goods Co. et al. (Tex. S. C.):

221 Southwestern Reporter (June 16, 1920) 259.

Action on Policy—Finding—Proximate Cause:

Where an explosion occurred during and after commencement of fire, the fire was the direct and proximate cause of the loss and the explosion merely the result of and an incident of the fire and such loss was covered by a policy excluding liability for damage from explosion.

Same—Same—Same:

Though insured assigned the sum due under the policy for collection, where no adjustment was to be made without his consent, he was not precluded from bringing an action on the policy, he being the real party in interest.

[Judgment for plaintiff below. Here affirmed against company.]

Rossini v. Security Mutl. Fire Ins. Co. of Chatfield, Minn.
(Cal. D. C. A.):

189 Pacific Reporter (June 21, 1920) 810.

Action on Policy—Mortgage—Proceeds:

Where property was insured by the mortgagor for his own benefit with a loss payable clause in favor of mortgagee, and the mortgagor defaulted and the property was sold under foreclosure proceedings and during the redemption period the property was destroyed by fire, it is *Held*, That the purchaser of the property at the foreclosure sale cannot maintain an action against the insurance company to recover the insurance, and that he has no claim to the proceeds of such insurance on the theory of assignment or subrogation or otherwise.

Mortgage—Purchaser at Foreclosure—Insurable Interest:

Where a mortgagor insured property for his own benefit the policy containing a loss payable clause in favor of mortgagee, and the mortgage was foreclosed, the purchaser at the sheriff's sale, subject to redemption had an insurable interest and so might protect himself by insurance.

[Judgment for company below. Here affirmed in favor of company.]

Stockton Natl. Bank v. Home Ins. Co. of New York
(Kan. S. C.):

189 Pacific Reporter (June 21, 1920) 913.

Action on Policy—Appraisal—Arbitration and Award:

A submission under an insurance policy and a contract to appraiser and an umpire to appraise the amount of loss sustained by insured is not an arbitration and award either under the statutes or common law, and, if valid and binding merely fixes the amount of the loss and damage.

Same—Same—Contract:

Where insurer relying on an appraisal as fixing the amount of loss for which it was liable which was made under an agreement subsequent to the damage, though the policy provision therefore was not binding under Mo. Stat., must prove that the appraisal was made in substantial compliance with the terms of the agreement.

Same—Same—Same:

Where the contract for appraisal of loss required estimation by items and in detail of the value and damage to the property destroyed or damaged, as specified in the policies, which enumerated several kinds of property, an appraisal which merely stated the total value of the property in the basement and the total damage to such property did not conform to the agreement, and the amount of loss fixed therefor is not binding on insured.

[Judgment in accordance with opinion.]

Security Printing Co. v. Westchester Fire Ins. Co. of
New York City (St. Louis C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 430.

Policy—Ownership—Waiver:

The retention by insurer of premiums after knowledge of the change of ownership was a waiver of the policy provision as to ownership.

Same—Action on Policy—Estoppel:

In an action by a mortgagee on a fire policy defended by insurer for invalidity of policy by reason of ownership clause and insurer also claims subrogation under terms of policy to rights of mortgagee, insurer is estopped to rely on the ownership clause.

[Judgment for plaintiffs below. Here affirmed against company.]

Hayden et al. v. American Cent. Ins. Co. et al. (St. Louis
C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 437.

Annotation: Effect of Violation of Warranty of Condition of Sole and Unconditional Ownership as Regards One or More of Several Items of Property Covered by Policy:

Under the above heading appears an annotation to the case of *Coniglio v. Connecticut Fire Ins. Co.*, reported in 182 Pacific Reporter 275; 5 American Law Reports 808.

Policy—Warranty—Compliance:

The provisions of a fire insurance policy insuring a stock of goods requiring insured to take, preserve and produce inventories and to keep books are promissory warranties, and a failure to comply with either renders the policy void, but a substantial compliance is sufficient.

Same—Same—Same:

A failure to produce an inventory as required by a fire insurance policy which was left at the bank at which insured did business and was mislaid by it and could not be found would not avoid the policy, where a subsequent inventory was produced, and invoices and account sales showing purchases and sales previous and subsequent to such inventories to the time of the fire were produced.

Same—Same—Book of Account—Definition:

Where insured kept accounts of certain sales on pad slips placed in a spindle and recorded each sale on the cash register and at the end of each day compared the slips with the sales as indicated by the register and added the items on adding machine, the pad slips, cash register items and adding machine slips, when pinned together and preserved complied with the provisions of the fire insurance policy requiring the keeping of books, though technically they were not "books of account."

[Judgment for plaintiffs below. Here affirmed against company.]

Home Insurance Co. v. Flewellen (Tex. C. C. A.):

221 Southwestern Reporter (June 23, 1920) 630.

Policy—Set of Books—Jury:

In an action on a policy of fire insurance insuring a store and requiring that insured keep account books showing the business done and stock on hand securely locked in a fire-proof safe at night, the question whether the insured party so complied with the policy with reference to the account books was for the jury.

Policy—Action—Time:

Though a fire policy provided 60 days for insurer to make payment of loss, the insured could sue immediately after the insurer denied liability, without waiting for such 60 days period to expire.

[Judgment for plaintiff below. Here reversed in favor of company.]

Baker & Lasley v. Phoenix Ins. Co. of Hartford (Kansas City C. A., Mo.):

221 Southwestern Reporter (June 30, 1920) 761.

Action on Policy—Arson—Jury:

In an action on a policy where the evidence tended to show that the fire was originally caused by an explosion of gasoline and that it was possible for a fire so caused to smolder after apparently being extinguished and break out later, as happened, it was *Held*, That such evidence was sufficient to warrant the jury in finding that insured did not intentionally burn his property.

Same—Payment—Penalty:

An insurer cannot avoid the penalty for vexatious refusal to pay on a claim by showing that it was in doubt whether plaintiff alone was entitled to the money or whether his sons could share therein as their mother's heir, where insurer did not send blanks or proof of loss as required by law or did not manifest a willingness to pay the estate of the former owner to whom the policy was originally made payable.

Same—Vexatious Delays—Jury:

In an action on a policy of fire insurance where the insurer failed to make payment of the claim, under the evidence the question of whether insurer believed in good faith that insured burned the house or merely acted arbitrarily and wilfully on a mere suspicion, was a question for the jury.

[Judgment for plaintiff below. Here affirmed on condition that plaintiff remit allowance for vexatious refusal to pay.]

Todd v. Security Ins. Co. of New Haven, Conn. (Kansas City C. A., Mo.):

221 Southwestern Reporter (June 30, 1920) 808.

Policy—Contract—Loss:

Recovery on a policy of fire insurance can be had only when the loss is brought fairly within the terms of the contract or by reasonable intendment covered by it.

Same—Ambiguity—Construction:

If doubt exists as to the meaning of a fire insurance contract, it should be resolved in favor of the insured rather than in the interest of the insurer.

Same—Risk—Loss:

In an action on a policy of fire insurance covering "broom corn, their own or held in trust or on consignment or sold but not removed, contained in Frame Warehouse Building, detached about 100 feet from factory building," it was *Held*, That the policy did not cover broom corn taken from such warehouse and placed in a new warehouse about 100 feet distant, the old warehouse being torn down and a smaller one constructed in its place and broom corn being divided between the two new warehouses.

Same—Same—Estoppel:

A statement by a counterman in the insurance office of a sub-agent of insurer that "the form was broad enough to cover any warehouse around there, that is a frame ware-

house," was nothing more than an expression of an opinion, which was too general and indefinite to estop insurer from denying liability on broom corn moved from one warehouse to another.

[Judgment for company below. Here affirmed in favor of company.]

Levinton v. Ohio Farmers Ins. Co. (Pa. S. C.):

110 Atlantic Reporter (July 1, 1920) 295.

Policy—Ownership—Forfeiture:

An appointment of a receiver who takes possession of the property is not a "change of title or possession" within the forfeiture clause of the fire insurance policy.

Same—Same:

The change of possession contemplated by the provisions of fire insurance policy avoided the policy on "change of title or possession" is a change in lawful right of possession.

Same—Increase of Risk—Receiver:

Whether the change of occupancy of the insured property resulting from the receiver's assumption of control increased the hazard is a question of fact.

Same—Forfeiture—Construction:

If the language of a forfeiture clause in an insurance policy is susceptible to two constructions, the one more favorable to the insured is to be adopted.

Same—"Change of Title"—Definition:

If a new and different corporate entity is created by a reorganization, the transfer of assets from the original to the new company within the consent of the insurer is a "change of title" within the meaning of the forfeiture clause of the fire policy.

[Judgment in accordance with opinion.]

Bowling v. Continental Ins. Co. (W. Va. S. C. A.):

103 Southeastern Reporter (July 3, 1920) 285.

Policy—Ownership—Waiver:

The clause in a fire insurance policy insuring a dwelling house providing that the policy shall be void if the insured does not own the fee simple to the property may be orally waived by insurer.

Same—Fraud or Mistake—Information:

The policy of fire insurance may be reformed upon the ground of fraud or mutual mistake.

Action to Reform—Recovery:

The recovery on a policy in an action to reform will not be reversed although the policy was not issued as agreed.

[Decree for complainant below. Here affirmed against company.]

Hanover Fire Ins. Co. v. Heirs (Fla. S. C.):

84 Southern Reporter (July 3, 1920) 605.

Action on Policy—Ownership—Waiver:

Where at the time of application for insurance, the insurer through its solicitor knew that the applicant did not own the land upon which the building sought to be insured was situated, the company will not be heard in defense to an action on the policy to set up non-compliance by insured, with the first stated condition of the contract, that "the assured is the sole and undisputed owner absolutely in fee simple of the land upon which the insured buildings stand, unless it is otherwise expressed in writing herein."

Same—Cancellation—Tender of Premium:

Where the fire policy provided "this policy shall be canceled at any time at the request of the insured or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided or become void or cease the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal this company retaining the customary short rate, except that when this policy is canceled by this company by giving notice, it shall retain only the pro rata premium." It was *Held*, That such policy cannot be canceled by insurer without tendering to insured the unearned portion of the premium so paid.

[Judgment for plaintiff below. Here affirmed against company.]

Globe & Rutgers Fire Ins. Co. v. Walker (Ga. S. C.):

103 Southeastern Reporter (July 10, 1920) 407.

Action on Policy—Change of Location—Evidence Considered:

The policy insured certain merchandise while contained in a brick building and its additions situated on a designated street. The building in question was a single two story brick. A fire wall had been constructed near the middle of the building. Two automatic fire doors connected the front and rear compartments of said building. The goods insured were moved from one compartment to the other. *Held*, That this act did not increase the risk to the insurance company nor violate the terms of the policy against change of location.

Policy—Rule of Construction:

Where there is some ambiguity in the language of the policy it will be resolved in favor of the insured and against the company which prepared the contract.

[Judgment for plaintiff below. Here affirmed against insurance company.]

Greer-Robbins Co. v. Insurance Company of State of Pa.

(Cal. D. C. A.):

190 Pacific Reporter (July 12, 1920) 187.

Oral Contract—Validity:

An insurance contract may be oral and such oral contracts are not objectionable on the ground that they vary the terms of the written applications.

Application—Counter-Offer—Distribution of Insurance by Company:

That it was left to the company to apportion the amount of the insurance among the several items desired to be insured would not prevent the policy which did so apportion the insurance from being an acceptance instead of a counter-offer to insure.

Same—Same—Payee:

The policy contained a provision for payment of loss to a lien holder. The application contained no request that the proceeds be so paid. *Held*, That this did not constitute such a variance as to make the policy a counter-offer. The policy was delivered as being in compliance with the offer and the application is not presumed to contain the details of the provisions of the policy.

Same—Acceptance—Variance:

The retention of the policy without objection and beyond a reasonable time would constitute an acceptance thereof, even though it was not in strict conformity with the terms of the application.

Same—Premium—Waiver:

The unconditional delivery of the policy which by its terms required payment of the premium as a condition to its taking effect, is sufficient to constitute a waiver of the provision with reference to prepayment of premium, it being presumed from delivery that the company intended to extend a temporary credit to the insured.

Same—Conditional Delivery—Facts Considered:

The enclosing of the bill for the premium with the request that remittance be made if the policy is satisfactory, is not a statement of condition of delivery. It is merely a request for payment of the premium that would become due upon the complete acceptance of the policy.

[Judgment for plaintiff below. Here affirmed against company.]

Ginners' Mutual Underwriters Assn. v. Fisher et al.
(Tex. C. C. A.):

222 Southwestern Reporter (July 14, 1920) 285.

Policy—Acceptance—Merger of Antecedent Agreements:

An oral agreement was alleged to the effect that the agreement was for a policy covering the term of three years "and then from year to year." The policy delivered was for one year. It was accepted and the premium paid. *Held*. That the policy issued and delivered constituted a contract between the parties and all antecedent negotiations and agreements were merged into it.

Contract to Issue Policies—Statute of Frauds:

It was alleged that at the time of the issuance of the policy the further agreement was made that other policies should be "issued from year to year during the said three years."

Held. That this contract was not to be performed within a year from the making and was within the statute of frauds.

[Judgment for company below. Here affirmed in favor of company.]

Harrower v. Ins. Co. of N. Amer. et al. (Ark. S. C.):

222 Southwestern Reporter (July 14, 1920) 39.

Statute—Technical Defenses—Constitutional Law:

Art. 4874a Vernon's Sayles' Ann. Civ. St. Texas. (Laws 1913, c. 195) preventing fire insurance companies from making technical defenses and providing that no violation shall render a policy void unless contributing to bring about the destruction of the property insured, is not void under the constitutional provision that no bill shall contain more than one subject, which shall be clearly expressed in its title.

Same—Same—Scope of Act:

The purpose of the Act is not to prevent fire insurance companies from incorporating in their policy contracts provisions of any character or class but to prevent them from avoiding liability under immaterial provisions. Only such provisions are embraced within its terms. It is not unrestricted and does not mean that all policy provisions are intended to be brought within its purview.

Same—Same—Same:

Such Act is not applicable to the proof of loss clause of the standard policy; the three-fourths value clause; the clause relating to encumbrances or any other clause the breach of which could not bring about loss by fire.

Same—Same—Iron-Safe Clause:

The insured's breach of the "iron-safe clause" is available to the insured, notwithstanding provisions of the Act above referred to.

Same—Same—Construction of Laws:

That the Legislature did not intend the Act above referred to to include defenses based upon the violation of provisions which could not have contributed to the loss, is evidenced from the provisions of the Fire Insurance Commission Act, as also from the Insurance Act of 1903.

[Judgment for defendant below. Affirmed on appeal to C. C. A. Here affirmed.]

McPherson v. Camden Fire Ins. Co. (Tex. Com. App.):

222 Southwestern Reporter (July 14, 1920) 211.

Statute—Technical Defenses—Other Insurance:

Art. 4874a, Vernon's Sayles' Ann. Civ. St. Tex. 1914. (Laws 1913, c. 105) prohibiting technical defenses, has no application to a breach of those provisions of a policy which are material to the risk but a violation of which could not, from their very nature, contribute to bring about the destruction of the property. The clause of the policy prohibit-

ing other insurance was material to the risk and is not embraced within the provisions of the Act referred to.

[Judgment against insurance company below. Affirmed on appeal. Here reversed in favor of insurance company.]

Providence-Washington Ins. Co. v. Levy & Rosen;

Aetna Ins. Co. v. Waco Co. (Tex. Com. App.):

222 Southwestern Reporter (July 14, 1920) 216, 217.

Mutual Company—Assignment of Policy—Completion:

The loss of the defendant, a mutual company, provided that any person residing in any one of certain counties could become a member by paying a membership fee of \$2.00. A member sold his property and undertook to assign his policy notifying the company of such fact. On receipt of such advice, the secretary of the company wrote to the purchaser of the property stating that the assignment would be complete upon payment of the membership fee of \$2.00. Pending the communications and before the remittance of the \$2.00, the property burned. *Held*, That there could be no recovery.

[Judgment for company below. Here affirmed in favor of company.]

McMatt v. Patrons Mutual Fire Ins. Co. (Mich. S. C.):

178 Northwestern Reporter (July 16, 1920) 73.

Parol Contract—Elements:

It is essential to a valid parol contract of insurance that there should be a definite understanding, and the minds of the parties must meet, as to the company in which the insurance is to be placed, the property to be covered, the amount of the insurance, and the duration of the risk, and the premium to be paid must be agreed upon and paid, or exist as a legal charge against the party insured, where the contract is not conditioned upon payment in advance.

Same—Premiums—Previous Custom:

Previous dealings between the parties may be looked to in determining whether an insurance contract was intended to be conditional upon the prepayment of the premium, or whether the extension of credit was contemplated.

Same—Duration of Risk—Evidence:

Although no express agreement was reached as to the duration of the risk, a parol contract of insurance will not be invalidated for uncertainty in that particular, if the intention of the parties as to the duration of the risk can be gathered from the facts and circumstances in evidence.

Same—Same—Same:

In an action to enforce an alleged parol contract to insure, proof that the insurance company previously had issued to the plaintiff a five-year policy covering the same property, which was afterwards canceled, was not evidence of a definite understanding between the parties that the duration of the risk should be the same under the parol contract, where nothing was said between the parties with reference to the prior policy, or from which a mutual intention to adopt its terms could be inferred.

Same—Removal of Goods—Consent:

It is not indispensable to recovery for the loss of goods insured, after their removal to a different place, that consent should have been first obtained for the removal; subsequent ratification and consent by the insurer, with knowledge of the facts, is equivalent to precedent consent.

Same—Same—Waiver:

In an action to recover for the loss of goods insured after their removal to a different location, the defense of forfeiture on the ground of such removal will be held to have been waived, where, prior to the loss, the insured gave notice of such removal and requested the authorized agent of the insurer to transfer the insurance to cover the goods in their new location, and the agent agreed to make such transfer; although no formal consent or transfer was, in fact, executed.

Same—Same—Authority of Agent:

An agent authorized to issue policies of insurance in a certain county, who enters into a valid contract to insure goods therein which are afterwards removed to another county, may bind his principal to transfer the insurance to cover the property in its new location, where, upon being notified by the insured of such removal, the agent promises on behalf of the insurer to make the transfer, and the insured is not informed by him, or otherwise, of any restriction upon the agent's authority in that regard.

[Judgment for plaintiff below. Here reversed in favor of company.]

Kor v. American Eagle Fire Ins. Co. (Neb. S. C.):

178 Northwestern Reporter (July 16, 1920) 122.

Over-Payment of Loss—Recovery:

The plaintiff company paid a claim for loss upon receipt of proof of loss stating that there was no other insurance. As a matter of fact there was other insurance. The company thereupon sued the insured for money had and received. *Held*, That the plaintiff's right of recovery did not depend upon proof of fraud. Money paid upon an innocent misstatement, as the court regards this, may be recovered back. However, the party which has made the payment may recover back only so much as in equity and in good conscience he may have been entitled to withhold.

Same—Same—Payment to Mortgagee:

The fact that the payment under the policy went to a mortgagee rather than to the defendant was immaterial. The money was paid over the insurance contract, and payment to the mortgagee was plainly for the account and benefit of the defendant owner.

[Judgment against company below. Here reversed in favor of company.]

Home Insurance Co. v. Murphy (N. Y., App. Tr.):

182 New York Supplement (July 19, 1920) 668.

Insurance Business—State Regulation:

The business of insurance is a public necessity and is stamped with public interest and is subject to all proper

and necessary regulations by the state in the exercise of its police powers.

Corporations—Powers—Subsequent Legislation:

The charter of a private corporation is a contract which cannot be impaired by subsequent legislation unless the right to change or repeal it is reserved, or the corporation is subjected to lawful regulation to which all contracts are subjected.

Same—Same—Same:

The company having been organized as a mutual company under Ill. Laws, 1869, p. 225, Sec. 25, under which Act the power of amendment was reserved, it was within the power of the Legislature to subsequently require that a company previously organized should have a stipulated surplus as a condition to the continuance of its business.

Mutual Company—Statute—Surplus:

Ill. Laws 1915, p. 488, relating to the organization and management of mutual companies other than life, provided in part (Sec. 15) that no such company should issue policies for cash premiums unless it possessed a surplus of at least \$100,000. Sec. 22 provided that any company previously organized could avail itself of and be governed by the provision of the Act by the adoption of a resolution by its board of directors. *Held*, That Sec. 15 was restrictive only of corporations organized under the Act, unless, under Sec. 22, the Act was adopted by a resolution of the board of directors of an existing company. Hence the plaintiff company, being an existing company and having never adopted any resolution to come in under the Act, was not obliged to have a surplus of \$100,000 in order to issue policies for cash premiums.

[Judgment for company below. Here affirmed in favor of company.]

Integrity Mutual Ins. Co. v. Boys et al. (Ill. S. C.):

127 Northeastern Reporter (July 20, 1920) 748.

Policy—Rule of Construction—Written Stipulation:

The written stipulations in a policy of insurance should control when irreconcilable with those which are printed; but that rule is qualified by the fundamental principle, applicable to all contracts, that they should be so construed, if possible, as to give effect to all of their stipulations, and strike none with nullity.

Tornado Policy—Damage by Rain:

Where a policy of insurance purports, by "rider," to insure "against all direct loss or damage by tornado, wind-storm or cyclone," but is made and accepted subject to certain stipulations, including a disclaiming of liability for loss or damage by water or rain, save under certain specified conditions, there can be no recovery for such loss, unless those conditions are found to exist.

[Judgment for insurance companies below. Here affirmed in favor of insurance companies.]

Cotton Bros. Cypress Co., Ltd., v. Home Ins. Co.;

Same v. Springfield Fire & Marine Ins. Co. (La. S. C.):

84 Southern Reporter (July 24, 1920) 792.

Temporary Contract—Terms of Contract—Evidence Considered:

Where a so-called "binder" was issued to serve as a regular policy pending the issuance of the standard policy, with a "rider" containing "builders' risks" clause affixed thereto, the "binder" and the "rider," having been executed together, must be read together, and the rider, having been added for the purpose of specification, must control.

Same—Builder's Risk—Right of Owner to Recover:

Where, on application of a building contractor who had contracted to restore partly destroyed building to its original condition, a "binder" was issued by insurer as a regular policy pending issuance of the standard policy required by law, with "rider" attached containing "builders' risks" clause, describing the property insured as the building "in course of construction, including lumber, brick and building material in the building and on the premises adjacent thereto, to be used in the construction of said building," insurer was not liable to owner for value of such partly destroyed property on its destruction before new work, except to a nominal extent, had been put into the building, the risk covered by such policy being the builder's risk, and not the owner's risk.

Same—Same—Parol Evidence:

In action on fire policy consisting of "binder" issued as a regular policy and a "rider" attached thereto containing "builders' risks" clause, involving issue of whether the policy was a regular policy or merely covering the builder's risk, parol evidence as to the circumstances under which the policy was executed was admissible on such issue, in view of ambiguity of contract.

Same—Same—Same:

In action on fire policy involving construction of "builders' risks" provision of "rider" attached to "binder" issued as a regular policy, testimony of contractors in the habit of taking out such policies, including the contractor who applied for policy being sued on, as to meaning of such provision, *Held*, admissible.

[Judgment for plaintiffs below. Here reversed with directions.]

Mixon et al. v. St. Paul Fire & Marine Ins. Co. (La. S. C.):

84 Southern Reporter (July 24, 1920) 790.

Action on Policy—Statute—Limitation of Action:

Under Sec. 4594, Ala. Code 1907, which provides for a penalty as against an insurance company which is a member of a tariff association, action may be brought fifteen days after proof of loss for recovery of the loss and the penalty, notwithstanding the proviso: "The penalty named herein (i. e., 25 percent of the amount proven to be due) shall not be enforced against any company which pays or offers to pay the

assured or the beneficiary the full amount of the loss ascertained and proven to be due * * * within sixty days after proof of loss."

[Judgment for insurance company below. Here reversed in favor of plaintiff and remanded for new trial.]

Blumberg Shoe Co. v. Phoenix Assur. Co. (Ala. S. C.):

84 Southern Reporter (July 24, 1920) 763.

Principal and Agent—Authority of Agent—License:

A license issued by the state insurance department to the local agent of an insurance company at the company's request is merely a regulatory permit; but neither the license itself nor the statute concerning its issue has the effect of defining the agent's powers to bind his company, nor do they change the general law of agency. His powers are merely those which his company expressly or impliedly confers upon him, according to the general law of principal and agent.

Discrimination—Offer to Surrender Note:

Where an insurance company contracts to carry the fire risk on property for a term of years, and the insured gives his promissory note to pay for such insurance, and the insurance contract provides that the company shall not be liable for any loss or damage that may occur to the property while the note given for the premium remains in default, it is not a substantial violation of the anti-discrimination law, when a fire loss occurs during the default of the maker of the note and while the insurance is suspended, for the insurance company in denying its liability to offer to surrender the note in exchange for a surrender of the insurance policy, without claiming any portion of the insurance premium earned before the insured defaulted in the payment of his note.

[Judgment for plaintiff below. Reversed on appeal (189 Pacific Reporter 139). Here reversal adhered to.]

Eikelberger v. Insurance Company of North America (Kan. S. C.):

190 Pacific Reporter (July 26, 1920) 611.

Policy—Coinsurance Clause—Statute:

Sec. 121 of the N. Y. Ins. Laws, as amended in 1917, provides: "No other or different provision, agreement, condition or clause shall be in any manner made a part of such contract or policy or endorsed thereon or added thereto or delivered therewith, except as follows, to wit: * * * 3. The extent of the contribution to be made under the policy in case of loss or damage. 4. Any other matter necessary clearly to express all the facts and conditions of insurance on any particular risk: Provided, however, that no such agreement or rider shall be inconsistent with or a waiver of any of the conditions or provisions of the standard fire insurance policy hereby established. * * *" There was in the standard form no provision made for a coinsurance clause but the company contends that the same is authorized under subdivisions three and four of the above. The insured on the

other hand urges that said clause is inconsistent with the provision of the standard form. *Held*, That the latter contention is correct, since the policy, without said clause, provides for payment of a loss in the ratio that the face amount of all insurance bears to the amount of the loss, irrespective of the value of the property; on the other hand when a coinsurance clause is read into the policy, the company's liability is determined by the ratio which the face amount of the total insurance bears to the value of the property. In other words, generally stated, in the absence of a coinsurance clause the insured collects his whole loss if that does not exceed his whole insurance, and his whole insurance if that does not exceed his loss. With a coinsurance clause present, the foregoing rule of recovery is modified and the recovery reduced if the insurance and the loss, or both, are below the percentage of value.

[Judgment for plaintiff below. Here affirmed against company.]

Durham v. Stuyvesant Ins. Co. (N. Y., App. Tr.):

182 New York Supplement (July 26, 1920) 887.

Policy—Ownership—Forfeiture:

The policy provided for forfeiture if the property were "sold or conveyed or the interest of the parties therein be changed in any manner." The insured, before loss, executed a contract of sale under the terms of which the purchase money and notes secured by mortgage were deposited with a disinterested person to be held pending the delivery of the deed to the property. The possession of the property was delivered to the purchaser before loss. *Held*, There was such a change of interest, title and possession as avoided the policy.

Same—Same—Same:

The property being so situated that the risk upon the dwelling could not be effected without effecting the risk upon the items of personal property, the entire policy became void upon breach of the conditions relating to change of interest in the real estate.

[Judgment for plaintiff below. Here reversed in favor of company.]

Farmers Mutual Fire Ins. Co. v. Olson (Ind. App.):

127 Northeastern Reporter (July 27, 1920) 848.

Action on Policy—Knowledge of Agent—Notice to Company:

The knowledge of the agent of a fire insurance company as to the title by which property is held, with respect to which property the agent, acting within the scope of his apparent authority, procures the issuance of a policy of fire insurance, is imputed to his principal, and is in law the knowledge of such principal.

Same—Same—Same:

An insurance company is deemed to know matters pertinent to the insurability of property upon which it issues a

policy of fire insurance, when such matters were in fact known to its agent at the time the latter procured the insurance.

Same—Same—Same:

As to such matters so known to such agent the insurance company is deemed to have knowledge, notwithstanding a clause in the policy provides that "No officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except * * * by agreement indorsed hereon or added hereto."

Same—Same—Same:

A policy of fire insurance stipulating that it should be void "unless otherwise provided by agreement indorsed hereon, or added hereto, * * * if the subject of insurance be a building on ground not owned by the insured in fee simple," is a valid obligation of the company issuing it, where the agent who caused the policy to be issued without indorsement had knowledge that the insured's title to the buildings covered was a leasehold estate only, and the insured was in fact ignorant of such provision in the policy until after a loss had occurred.

Same—Change of Ownership—Appointment of Receiver:

A provision in a policy of fire insurance that the policy "shall be void if any change * * * take place in the interest, title, or possession of the subject of insurance, whether by legal process or otherwise," is not breached by the mere appointment of a receiver to collect rents pendente lite in an action to declare a forfeiture of the leasehold interest of the insured, where such receiver is not, and the insured is, in actual physical possession of the property insured.

[Judgment for plaintiff below. Reversed by Court of Appeals. Here reversed against company.]

Foster v. Scottish Union & National Ins. Co. (Ohio S. C.):
127 Northwestern Reporter (July 27, 1920) 865.

Policy—Change in Interest—Contract to Sell:

If the insured, without the consent of the company, makes a contract to sell real estate vesting the equitable title to the property in the purchaser, the purchaser acquires such interest as to constitute a breach of the condition against change in interest.

Same—Same—Same:

Where seller had agreed to sell certain personal property for cash and the full purchase price had not been paid and the property had not been separated there was no such change in title as to avoid the policy. The mere fact that the buyer would have had recourse for the amount paid would not carry such an interest as to constitute a change in interest.

[Judgment for plaintiffs below. Here affirmed against company.]

Hubbard et al. v. Home Ins. Co. (Springfield C. A.):
222 Southwestern Reporter (July 28, 1920) 886.

Policy—Rule of Construction:

An insurance contract is not unlike any other, and is to be interpreted so as to give effect to the intention of the parties, ascertained from the language used in the instrument as a whole, and aided by the examination of other surrounding facts and circumstances, which may have a legitimate bearing on, or a tendency to disclose, such intention. It should be construed in a manner which will give effect to every material word used, within its bounds, if possible.

Policy—"Extension"—Facts Considered:

The policy covered a "brick building and extensions thereto, occupied as store and dwelling, situate No. 529 East 11th St." There were two brick buildings on the lot, one four stories in height, located on the front, and the other two stories in height, located on the rear, the latter being 25 feet distant from the first and physically separate and detached therefrom. The front building was occupied as a store and dwelling and was known by the street number 529. The use of the back building was not shown. The fire occurred only in the rear building. *Held*, That the rear building was to be treated as an "extension," although not physically attached to the large building, and that the plaintiff was entitled to recover.

[Judgment for plaintiff below. Here affirmed against company.]

Alterman v. Home Ins. Co. (N. Y., App. Tr.):

183 New York Supplement (August 16, 1920) 62.

Policy—Counter-Signature—Estoppel:

Where the policy was recognized by the insured and the company as a binding obligation, neither could thereafter claim that it was ineffective, because it was not countersigned by the local agent of the company.

Action on Premium Note—Default by Maker—Right to Recover Entire Amount:

The premium note, payable in installments, provided: "If default is made in payment of this note as above provided, then the whole of this note shall become immediately due and payable." *Held*, That where the insured failed to pay an assessment within the time provided by the terms of the note, then the whole note became due and payable; and unless the company canceled his insurance, he could not escape the payment thereof merely because the insurance was suspended or the company afterwards became insolvent.

Same—Same—Same:

The fact that the contract provided for a suspension of the insurance during default would not release the maker from the obligation to pay the note as provided.

Policy—Cancellation:

The contract of insurance having become effective, neither party could cancel nor terminate it without the other's consent, except upon strict compliance with the conditions provided in the policy for cancellation.

Assessment—Notice—Question for Jury:

The maker denied notice of the assessment because of non-payment of which, the policy lapsed. On behalf of the representative of the company, parol proof of the sending of notice was introduced. *Held*, That the plaintiffs, standing in the rights of the company, were not entitled to a directed verdict since it would be a question for the jury to say whether plaintiff's oral evidence that notice of the assessment was mailed was true or not.

Same—Request for Cancellation—Question for Jury:

Whether or not the maker of the note ever requested termination of the insurance, so as to relieve him of liability for the entire amount of the note was a question of fact for the jury, on his testimony that such a request was made.

Same—Cancellation—Parol Evidence:

As to the right of the insured to cancel, it should be determined from the terms of the contract and not from any officer of the company at the time the contract was entered into.

[Judgment for defendant below. Here reversed in favor of plaintiffs.]

State ex rel. Chorn, Supt. et al. v. Hudson (Kansas City, C. A.):

222 Southwestern Reporter (August 18, 1920) 1049.

Policy—Proof of Loss—Signature of Agent:

The insured lived in California. Her goods were kept in Kansas City. At insured's request, her father applied for the policy which was sent directly to her by the company. When the loss occurred her father and an attorney at Kansas City negotiated with the company with reference thereto, the attorney ultimately making up proof of loss, signing and swearing to it himself. Upon objection being made to proof so signed, the attorney requested their return which was refused. *Held*, That under these circumstances the company could not defeat liability on the ground that the insured did not herself sign the proof of loss.

Action on Policy—Waiver—Pleading:

It is not necessary to plead waiver in order to show and rely thereon in insurance cases.

Same—Measure of Recovery:

The policy fixed the value of the property at the time of the insurance and if the goods were not of a character to fluctuate or change in value and there being no evidence of depreciation and the loss being total, the plaintiff was entitled to recover the full amount of the policy.

[Judgment for plaintiff below. Here affirmed against company.]

Scott v. American Ins. Co. (Kansas City C. A.):

222 Southwestern Reporter (August 18, 1920) 1047.

Policy—Mutual Mistake—Reformation:

Where there is a mutual mistake and the policy does not correctly set forth the contract upon which the minds of the parties met, equity has power to reform the written instrument so as to speak the true understanding of the parties.

Same—Same—Same:

The policies in question covered property described as being on the northwestern corner of a certain street intersection. The policies were issued in renewal of other policies issued several years before. At the time of the issuance of the original policies there was no such property on the northwestern corner. However, at such time there was property of such description owned by the insured on the northeastern corner. Later a building was erected on the northwestern corner and was thereafter destroyed. *Held*, That the evidence was sufficient to show such mutual mistake as warranted the reformation of the policies so as to make them cover the property on the northwestern corner of said street intersection, and to require an order restraining defendants from prosecuting any action at law on said policies on account of the loss of the property on said northwest corner.

[Decree directed for reformation of policies.]

Insurance Company of North American et al. v. Cleveland (N. J. C. C.):

110 Atlantic Reporter (August 19, 1920) 582.

Action on Policy—Premium—Waiver:

Plaintiff, and another, testified that the defendant's secretary and agent stated that the premium could be paid within 30 days. This testimony was contradicted by the defendant's witness, who claimed that the insured was only to take effect at a subsequent time upon arrangements being made for payment of the premium. To corroborate plaintiff, it was shown that on the books of the company the insurance appeared to be effective from the date of the application. It was further shown that thereafter the company undertook to cancel the policy without having formally notified the plaintiff. *Held*, That this evidence was sufficient to show waiver of prepayment of premium at the time of the making of the application. The act of canceling the policy was inconsistent with the position that it had never become effective.

Same—Same—Same—Authority of Agent:

There being nothing in the statute or in the articles of incorporation forbidding a township mutual fire insurance company to extend credit to an applicant for insurance, or to waive prepayment of the premium, the officer of such company, having authority to accept insurance and issue policies, may, upon the receipt of an application for immediate insurance agree to extend credit for the payment of the premium, or waive prepayment of the same, even though a by-law provides that insurance will take effect on the

day when the application and undertaking is signed by the applicant, and the premium and fees paid to the director or authorized agent taking the application.

[Judgment for plaintiff below. Here affirmed against company.]

Wieland v. St. Louis County Farmers' Mut. Fire Ins. Co. (Minn. S. C.):

178 Northwestern Reporter (August 20, 1920) 499.

Action on Policy—Ownership—Evidence:

Written statements prepared by the insured's attorney from information furnished by insured and sent by him to the company were admissible on the question of ownership, and it was error to exclude them.

Same—Loss Caused by Wrong-Doer—Subrogation:

Where loss has been caused by reason of negligence of a railroad company, the insurance company is entitled to be subrogated to the rights of its assured as against the railroad company.

[Judgment for plaintiff below. Here reversed in favor of company.]

Hartford Fire Ins. Co. v. Triplett et al. (Tex. C. C. A.):

223 Southwestern Reporter (August 25, 1920) 305.

Action for Damages for Delay in Settling Claim—Nature of Action—Proximate Cause of Loss:

A complaint alleging damages arising out of malicious delay on the part of the insurance company in settling the plaintiff's loss presents a cause of action for breach of contract, not in tort; neither the plaintiff's loss of trade nor his inability to pay creditors, or the loss of good-will of the business, could be said to have flowed naturally or proximately from the delay in adjusting and paying the loss.

[Judgment against insurance company below. Here reversed in favor of insurance company.]

Independent Grocery Co. v. Sun Insurance Co. et al. (Minn. S. C.):

178 Northwestern Reporter (August 27, 1920) 582.

Policy—Vacancy—Waiver:

Under policy forbidding waiver of provisions by agents unless indorsed on policy or added thereto, there can be no recovery by insured violating 10-day vacancy clause on showing of an oral agreement of agent that it was all right, and that he would take care of the matter; no vacancy permit being indorsed on or attached to policy.

[Judgment for plaintiff below. Here reversed in favor of company.]

Dominick v. Detroit Fire & Marine Ins. Co. (La. S. C.):

85 Southern Reporter (August 28, 1920) 236.

Policy—Mortgage—Forfeiture:

The giving of a chattel mortgage, although it is void un-

der the laws against usury, avoids policy of insurance containing the usual mortgage clause.

[Judgment for company below. Affirmed on appeal (171 New York Supplement 484). Here affirmed in favor of company.]

Lipedes v. Liverpool & London & Globe Ins. Co., Ltd.
(N. Y. C. A.):

128 Northeastern Reporter (August 31, 1920) 160.

Action on Policy—Time—Premature Action:

Where fire policy entitled insurer to 20 days within which to accept or object to amount of claim, and, in the absence of objection, insurer was charged to have assented to amount claimed in preliminary proof and such loss became payable 30 days from expiration of the 20-day period, an action commenced 48 days after furnishing a preliminary proof of loss was prematurely brought.

[Judgment for plaintiff below. Here reversed in favor of Company.]

Mitchell v. Merchants' Fire Assn. Corporation of New York (Cal. D. C. A.):

191 Pacific Reporter (September 6, 1920) 71.

Action on Policy—Title—Evidence:

In an action to recover on an insurance policy for hay destroyed by fire, the evidence was held sufficient to support the finding that the title to the hay had passed from plaintiff to another so that plaintiff was not entitled to recover on the policy.

[Judgment for plaintiff below. Here affirmed in favor of company.]

Jackson v. Continental Ins. Co. (Mich. S. C.):

178 Northwestern Reporter (September 10, 1920) 772.

Action on Policy—Occupancy—Notice of Agent:

Evidence considered and *Held*, That insurer's agent had notice of occupancy of premises by tenant.

Same—Vacancy—Jury:

Vacancy is a question for the jury.

Same—Proof of Loss—Waiver:

Where insurer fails to furnish insured blank form of proof of loss, it waives proof of loss.

Same—Same—Statute:

North Dakota statute as to proof of loss construed.

Same—Denial of Liability—Return of Unearned Premium:

Insurer could not retain unearned premium and deny liability on policy.

[Judgment for plaintiff below. Here affirmed against company.]

Horswill v. North Dakota Mutual Fire Ins. Co. (N. D. S. C.):

178 Northwestern Reporter (September 10, 1920), 798.

Contract—Cancellation—Statute:

The statutory right of insured to cancellation of his fire policy is by construction a part of the insurance contract, and may be exercised by his request for cancellation and surrender of the policy for that purpose.

Loss—Settlement—Consideration:

Where the exact amount of the loss had been definitely determined by insured and insurer who carried the entire risk, a partial payment by insurer, a receipt by insured in full satisfaction of the loss and a claim asserted by insurer without any foundation that other insurance covering a portion of the loss was in force when the fire occurred, do not constitute a consideration for a compromise in settlement, or for accord and satisfaction, and insured is not required to tender back the partial payment as a condition of recovering the balance of the loss.

Fire Insurance—Attorney's Fees—Statute:

Statutory authority to tax as costs attorney's fees upon a rendition of judgment in favor of plaintiff in an action on "any policy of life, accident, indemnity, sickness, guaranty or other insurance of a similar nature," extends to an action on a fire insurance policy since "Indemnity" as thus used includes fire insurance.

[Judgment for plaintiff below. Here affirmed against company.]

Johnson v. St. Paul Fire and Marine Ins. Co. (Neb. S. C.):
178 Northwestern Reporter (September 17, 1920) 926.

Fire Insurance—Appraisal—Tariff Association:

The failure to submit to an appraisal of loss is no defense in case of insurer's membership in a tariff association.

[Judgment for plaintiff below. Here affirmed against company.]

Phoenix Assur. v. Bloomberg Shoe Co. (Ala. S. C.):
85 Southern Reporter (September 18, 1920) 815.

Policy—Proof of Loss—Forfeiture:

The provision in a standard fire insurance policy requiring insured to notify company in writing of the loss and furnish proof of such loss are conditions precedent of the right to sue but the failure to comply therewith promptly does not invalidate the policy or work a forfeiture of insured's right in the absence of a stipulation to that effect.

Same—Interest—Time:

Where a fire policy provides that loss shall not be payable until 60 days after the proof of loss has been furnished, interest on the amount due does not run prior to said time.

[Judgment for plaintiff below. Here affirmed against company.]

Natl. Union Fire Ins. Co. of Pittsburgh v. Cone (Fla. S. C.):

85 Southern Reporter (September 18, 1920) 913.

Policy—Arbitration Clause—Applicability:

The arbitration clause in the standard fire insurance policy does not apply to a case where the company disputes its liability but only to a case where there is a dispute solely as to the amount of the loss or damage.

[Plaintiff's motion for new trial denied.]

Malmes, v. Automobile Ins. Co. of Hartford, Conn. (S. C., Monroe Cy., N. Y.):

183 New York Supplement (September 20, 1920) 690.

Action on Policy—Contract—Consummation:

Where fire policy was delivered and premium accepted by insurer, it was not necessary that insured should have requested the policy in order that a binding contract of insurance might be consummated.

Same—Authority of Agent—Defense:

Undisclosed limitation of insurer's agent's authority to issue the policy sued on except on condition of cancellation of a previously issued policy, which condition was not performed, was no defense, insurer not having canceled either policy during the time between issuing the second policy and the time of the loss.

[Judgment in accordance with opinion.]

T. E. Haddox & Co. v. Ohio Valley Fire & Marine Ins. Co. (Ky. C. A.):

223 Southwestern Reporter (September 29, 1920) 1009.

Policy—Contract of Sale—Change in Interest:

A policy forbidding "any change in the interest, title or possession of the subject of insurance" is not avoided by a contract for sale of property insured unless vendee has taken possession.

[Judgment in accordance with opinion.]

Budleman v. American Ins. Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (October) 51.

Policy—Ownership—Mortgage:

Clause in fire policy as to sole ownership did not apply as against a mortgagee.

Same—Same—Same:

That a mortgagee personally procured a fire policy and directed that it be issued in the name of a person who was not the sole owner did not make such mortgagee responsible for the invalidity of the policy which required sole ownership.

Policy—Mortgage—Construction:

A clause in a fire insurance policy that the insurance as to the interest of the mortgagee "shall not be invalidated by any act or neglect of mortgagor or owner of the property insured" was construed to mean any act or neglect on the part of the mortgagor, either prior or subsequent to the attachment of the mortgage clause.

Same—Same—Ambiguity:

Ambiguity in fire policies must be construed against the insurer.

[Judgment for plaintiff below. Here affirmed against company.]

Burns v. Insurance Co. of Pennsylvania (Kansas City C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 96.

Policy—Ownership—Mortgage:

A provision in a fire policy that insured must be the sole and unconditional owner of the land did not apply to the mortgagee.

Same—Ambiguity—Construction:

Ambiguities in a fire policy are to be construed in favor of the insured.

[Judgment for plaintiff below. Here affirmed against company.]

Burns v. Ohio Farmers Ins. Co. (Kansas City C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 98.

Policy—Assignment—New Contract Effected:

An assignment by insured with insurer's consent created a new contract between insurer and assignee.

Same—Concealment—"Material to Risk":

Failure to disclose a fact "material to the risk" is fraudulent when the insured knows of it and it is such that an ordinarily prudent person would know it to be "material to the risk."

Same—Action on Policy—Pleading:

In an action on a policy, an answer based on fraudulent concealment should allege, not only that the fact concealed was material but also that an ordinarily prudent person in the situation of insured would have known it to be material.

[Judgment for plaintiff below. Here affirmed against company.]

Hartford Fire Ins. Co. v. Golden (Ky. C. A.):

224 Southwestern Reporter (October 13, 1920) 177.

Action on Policy—Partial Loss—Measure of Damages:

Under Missouri Statute the measure of damages for partial destruction of property by lightning is the difference between the fair cash value of the insured property immediately before being struck by lightning and immediately after, so that in an action on a policy it was error to instruct the jury that the measure of damages was the amount necessary to repair the injury.

[Judgment for plaintiff below. Here reversed in favor of company.]

Scism v. Home Ins. Co. (Springfield C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 48.

Policy—Waiver—Place of Contract:

Where a fire insurance contract was made in Maryland

the question of whether insurance agents had authority to waive conditions of policy was governed by the laws of Maryland and therefore could not, according to Maryland law, which controlled in such cases, after delivery of policy, but before payment of premium, waive future compliance by insured with iron-safe clause.

[Judgment for company below. Here affirmed in favor of company.]

Cohen v. Home Ins. Co. (Del. S. C.):

111 Atlantic Reporter (October 14, 1920) 264.

Action on Policy—Witness—Directed Verdict:

In an action on a policy of fire insurance where the amount of the loss was an issue and depended on the interested testimony of plaintiff both as to the quantity of goods destroyed and as to their value, the credibility of such witness was eminently for the jury, and though uncontradicted by direct testimony, it was error to direct a verdict for plaintiff for the full amount shown by his testimony.

[Judgment for plaintiff below. Here reversed in favor of company.]

Fire Assn. of Philadelphia v. Mechlowitz (U. S. C. C. A.):

266 Federal Reporter (October 14, 1920) 322.

Cancellation—Agent of Insured—Authority of Agent:

Persons acting for insured in placing insurance on his property, whose custom it was to give notice of cancellation and procure other insurance when possible should be considered as mere brokers and not authorized to accept notice of cancellation.

Action on Policy—Amount of Loss—Evidence:

In an action on policy of fire insurance, insuring a dry cleaning establishment and garments contained therein, schedules submitted in evidence containing the names of persons, lists of garments and sums of money unsupported by any other testimony as to value were insufficient to establish the amount of the loss.

Same—Preliminary Proofs of Loss—Same:

Preliminary proofs of loss are not admissible as evidence of the fact of loss or the amount of loss.

[Judgment for plaintiff below. Here reversed in favor of company.]

Lauman v. Concordia Fire Ins. Co. (Cal. D. C. A.):

192 Pacific Reporter (October 18, 1920) 128.

Annotation—Provision against a Change in Interest, Title or Possession as Affected by a Deed or Other Instrument which was Merely Colorable or Has not Been Delivered:

Under the above heading appears an annotation to the case of Phillips v. Farmers Mutual Fire Ins. Co., reported in 175 Northwestern Reporter 144.

7 American Law Reports 1606.

LIFE INSURANCE

Revenue—Income Tax—Premiums—Deductions:

By the Income Tax Act, 1842, ss. 163, 164 and 190, Sched. G, r. xvii., coupled with s. 66 sub-s. 2, of the Finance (1909-10) Act 1910, a person liable to super-tax is, for the purposes of the tax, allowed to deduct from his income "every sum of annual interest or other annual payment reserved or charged thereon, whereby the income shall or may be diminished. The appellant effected policies of insurance on his life, and for the purpose of raising money, he, by a series of deeds, assigned his life interest in certain estates, together with the policies, to an assurance company by the way of mortgage and further charge to secure advances. By the deeds he covenanted to pay (1.) the interest on the mortgages, and (2.) the premiums on the life policies. He further gave a right to the mortgages, in the event of his failing to pay the premiums to pay them themselves and to charge the same upon the mortgaged property: *Held*, That in estimating his income for the purpose of super-tax, he was not entitled to deduct the premiums.

[Judgment in accordance with opinion.]

Earl Howe v. Commissioners of Inland Revenue:

[1919] 2 K. B. & P. Law Reports (October 1) 336.

Policy—Contract—Construction:

Where the meaning of language in a policy of life insurance is ambiguous or susceptible to different constructions, the same will be strictly construed against the insurer, and that construction adopted which is most favorable to the insured.

Life Insurance—Disability—Agreement to Pay Premiums:

In an action on an insurance policy, which contains the provision "that if the insured shall furnish due proof of total permanent disability that he will be continuously and wholly prevented thereby, for life, from pursuing any and all gainful occupations, the company agrees to pay regularly for the insured the premiums," then in the same section contains the further provision, "if, however, the insured shall recover so as to be able to engage in any gainful occupation during the premium paying period, the company's obligation to pay the premiums shall cease," that said sections are ambiguous and contradictory, but, when construed together, must mean that if the insured is totally disabled, and will probably be so for life, he comes within the provision of the policy requiring the company to pay the premiums.

Same—Total Disability—Proof—Waiver:

The provision in the insurance policy requiring proof of total disability to be furnished the company within a certain definite time is waived by the company denying liability

within such time upon other grounds than failure to furnish proof of total disability.

Appeal and Error—Evidence—Statute:

Under Sec. 4759 of Rev. Laws of 1910 the allegation of any appointment of authority is taken as true, unless the denial of the same be verified by affidavit of a party, his agent or attorney. Plaintiff alleged that a certain party was the agent of defendant, which allegation was undenied, as above required. Evidence was offered on the trial of the cause to establish the agency thus admitted. *Held*, That the reception of such evidence was not prejudicial error.

[Judgment for plaintiff below. Here affirmed against company.]

Federal Life Insurance Company v. Lewis (Okla. S. C.):
183 Pacific Reporter (November 3, 1919) 975.

Trial—General Verdict:

In an action on a policy a jury in returning a general verdict in favor of the plaintiff thereby found every material fact legitimately provable under the issues, in her favor.

Action on Policy—Habitual Drunkard—Defense:

In an action on life insurance policy the defense by the insurer that insured was an habitual drunkard and was alcoholic at the time he applied for the insurance did not relieve insurer where there was evidence sufficient to show that insurer through its agent and medical examiner had knowledge of insured's condition.

Action on Policy—Alcoholic—Fraud—Defense:

In an action on a life insurance policy where insurer defended on the ground that insured was an alcoholic, evidence that insured was intoxicated at the time he was solicited to apply for the insurance, and proof that the agent filled out the application and the check for the payment of the premium, was sufficient to justify the finding that the insured's conduct was not fraudulent.

Misrepresentation—Alcoholic—Knowledge of Agent:

Where insured was alcoholic at time of application for insurance and agent had full knowledge, misrepresentations of insured that he was not an alcoholic and had not been treated for illness, did not avoid the policy.

Appeal and Error—Instructions:

Any error in refusing requested instructions on matters not involved in the cause is harmless.

Same—Same:

There was no error in refusing tendered instructions where instructions had already been given substantially covering the questions.

[Judgment for plaintiff below. Here affirmed against company.]

Metropolitan Life Ins. Co. v. Wathen (Ind. App.):

124 Northwestern Reporter (November 4, 1919) 403.

Policy—Premium—Date "Due":

A policy of life insurance provided that the premiums were

to be payable "on or before the last day of January, April, July and October" in each year. By the conditions attached it was provided that "Thirty days of grace without liability to fine are allowed for the payment of each renewal premium" and that "any policy which has acquired a surrender value will not immediately lapse if a renewal premium be not paid within the days of grace, but will be kept in force for twelve calendar months from the date upon which the last premium became due," subject to payment of the arrear premiums and interest within that period. The premium payable on April 30, 1915, was paid. At that date the policy had acquired a surrender value. The premium payable on July 31, 1915, and all subsequent premiums were unpaid. On August 7, 1916, the plaintiff, who was assignee of the policy, with the object of keeping the policy on foot, offered to pay to the insurers the premiums then in arrear, contending that the twelve months mentioned in the conditions ran from the last of the days of grace, but the insurers refused to accept the premiums. *Held*, That the last premium "became due" on the date specified in the policy as than on or before which it was payable—namely, July 31, 1915; that the offer on August 7, 1916, to pay the premiums in arrear was consequently too late, and that policy had lapsed.

[Judgment in accordance with opinion.]

McKenna v. City Life Assurance Co.

[1919] 2 K. B. The Law Reports (November 4) 491.

Action to Reinstate—Concealment by Insurer—Evidence:

In an action by a bank holding a policy as assignee as security against insurance company for reinstatement, evidence was held insufficient to show concealment by insurance company of the fact that the policy was subject to a prior lien.

Insurance—Rights of Assignee:

An assignee of a life insurance policy has the same rights as had the assignor, and upon forfeiture of the policy the assignee is entitled to no other or greater rights than could have been asserted by the assignor.

Same—Same—Cancellation—Reinstatement:

An assignee of a life insurance policy is not entitled to reinstatement after cancellation of the policy for default in payment of premiums, though he offers to pay premiums and discharge loan made by insurer.

Same—Loan Agreement—Attaching to Policy—Statute:

Code Art. 1819 providing that life policies shall have endorsed thereon a copy of any application or representation of the assured which may in any manner affect the validity of the policy, is not applicable to a collateral agreement as to a certificate of loan.

Same—Actions:

An action by the assignee of a life insurance policy for reinstatement is not an action on the policy so as to make applicable Code Art. 1819, providing that any application or

representation which may affect the validity of the policy must be endorsed thereon.

[Judgment for company below. Here affirmed in favor of company.]

Exchange Bank of Bloomfield v. Ill. Life Ins. Company
(Ia. S. C.):

174 Northwestern Reporter (November 7, 1919) 260.

Policy—Premium—Default—Lapse:

A yearly renewable term policy required the payment of premiums in advance with 30 days grace. The policy further provided "Except as herein provided the payment of a premium or installment thereof shall not maintain this policy in force beyond the date when the next premium or installment thereof is payable. If any premium or installment thereof be not paid before the end of the period of grace, then this policy shall immediately cease and become void, * * *" and that dividends would be paid in cash, but gave the insured the option to have them applied on the premiums. Insured defaulted in payment of an annual premium and the default continued for more than 30 days. *Held*, That the policy lapsed, although dividends were due which, if applied to the payment of the premium would have extended the policy beyond the time of insured's death.

[Judgment for company below. Here affirmed in favor of company.]

Classon v. Mutual Life Ins. Company of New York (Col. S. C.):

184 Pacific Reporter (November 10, 1919) 296.

Corporations—Stock Subscription—Rescission:

One subscribing and executing a note for stock in a corporation, wishing to rescind such purchase, must act promptly. A delay of two years would bar the right to rescission, especially in view of the fact that the company during the delay had become insolvent and its estate was in process of administration by a receiver.

Same—Same—Same—Pleading:

In an action by subscriber to stock in a corporation to rescind, averments that defendant and a receiver who had been appointed to take charge of the company's affairs were negligent in failing to collect certain notes due the company, were immaterial.

Insurance—Subscription Note—Property of Insurance Commissioner:

Under Rev. St. 1908, Art. 3117, a note given for subscribed stock in a proposed insurance company cannot become the property of the company until \$100,000 has been deposited with the commissioner of insurance and the subscription price of stock is the property of the insurance commissioner and not of the insurance company.

Appeal and Error—Subscription Note—Property of Insurance Commissioner—Parties:

In an action to cancel a note given for subscription of

stock in a proposed insurance company, where \$100,000 had not been deposited with the commissioner of insurance as required by Rev. St. 1908, Art. 3117, the supreme court on appeal cannot direct what shall be done on reversing a judgment in favor of the proposed insurance company, if the insurance commissioners have not been made parties to the action.

Subscription Note—Property of Insurance Commissioner—Cancellation—Parties:

In an action to cancel a note given for stock in an insurance corporation which failed to deposit \$100,000 with the commissioner of insurance, as required by Rev. St. 1908, Art. 3117, the court cannot cancel the note if the insurance commissioners are not made parties to the action.

[Decree for company below. Here reversed against company.]

Lucero et al. v. Colorado Life Ins. Company et al. (Col. S. C.):

184 Pacific Reporter (November 17, 1919) 379.

Agent's Contract—Forfeiture—Instruction:

A life insurance company gave its agent a contract which was terminable at the will of either party without cause or notice. Its terms were modified to provide additional reward for additional services, provided further that should the contract terminate by resignation, death, dismissal or otherwise, during the year a salary or commission which the agent had received should be in full of all his claims. *Held*, That such provisions were in the nature of forfeitures, not favored in law, and which would not be enforced in the absence of clear proof that they were so intended.

Same—Same—Same:

Where a life insurance company made a contract with its agent consisting in part of writing and in part of oral agreements, the written part containing provisions that upon resignation, dismissal, death or other termination of the contract during the year, the salary commission which the agent had received should be in full of all his claims upon the insurance company, such contract is construed as referring to what the agent had received up to such time, and that he forfeited anything that might afterward accrue on business done subsequent to his retirement, and also to contemplate a full adjustment and settlement of his accounts on termination of the agency.

[Judgment for company below. Here reversed against company.]

Teague v. American Nat'l. Insurance Company (Tex. C. A.):

215 Southwestern Reporter (November 19, 1919) 131.

Action on Premium Notes Signed by Agent—Parties—Practice:

An insurance agent to whom policies were entrusted for delivery to an applicant for insurance on payment of the first

premiums in cash, disobeyed instructions, delivered the policies and took the applicant's notes, payable to the applicant and endorsed in blank. An assignee of the notes after maturity sued on them. The insurance company claimed the notes as its own and intervened. *Held*, That the insurance company had a right to intervene and that the complaint in intervention stated the case.

Premium Notes Signed by Agent—Insurer's Remedy:

On learning of its agent's unauthorized act in receiving applicant's notes for premiums and signing same, the insurance company had three courses open: (1) It might repudiate his act and demand the return of the policies, (2) It might charge the agent with its share of the premiums, in which event the notes would belong to the agent, (3) It might ratify his act and demand notes.

Same—Rights of Assignee:

Where the agent disobeyed company's instructions, accepted applicant's premium notes and signed same, the agent being entitled to 70 percent of the premium represented by the notes, judgment should be for his assignee for 70 percent of the amount and for the company for the balance.

[Judgment in accordance with opinion.]

Hoidale v. Cooley (Minn. S. C.):

174 Northwestern Reporter (November 21, 1919) 413

Life Insurance—Murder of Insured by Beneficiary:

The beneficiary of a life insurance policy who murders the insured will be denied the right to recover thereon on grounds of public policy.

Same—Same—Same—Assignment:

Where the beneficiary of a life insurance policy murders the insured and assigns his interest in the policy to another, the assignee will acquire no better right than his assignor, and will not be entitled to recover upon the policy.

Same—Same—Liability of Insurer:

Where the beneficiary of a policy of life insurance murders the insured, the doctrine of public policy will extend no further than to deny to such beneficiary the right to recover. The liability of the insurer to pay the fund is not thereby extinguished, ordinarily a recover will be allowed on such policy in the name of the personal representative of the insured for the benefit of his estate.

Same—Same—Descent and Distribution:

Under the law prohibiting the forfeiture of estates upon conviction of crime, the estate of one who is murdered will pass by devolution to the person designated by law to take the same, notwithstanding he may have been guilty of murder in taking the life of the one from whom he inherits.

Same—Same—Same:

The personal representative of one who is murdered may not recover the amount of a policy of insurance on his life

where the murder was committed by the party who is the sole distributee of such insured person.

[Judgment in accordance with opinion.]

Johnston v. Metropolitan Life Ins. Co. (W. Va. S. C. A.):

100 Southeastern Reporter (December 13, 1919) 865.

Action on Policy—Distribution Period—Insurance Commission:

In an action on a policy of life insurance issued March 1, 1911, where it appeared insured died May 24, 1918, and premium due March 1, 1918, was not paid, exclusion of evidence as to the amount of profits earned by the policy at the end of five years, on the ground that the policy provided for the distribution of profits only at the end of twenty years, was improper, the Insurance Commission having, before the policy was issued, forbidden a distribution period of more than five years, and whatever the language of the policy might be, the law would read it to provide for a five year and not a twenty year distribution period.

[Judgment for company below. Here reversed against company.]

Cole v. Jefferson Standard Life Ins. Co. (S. C. S. C.):

100 Southeastern Reporter (December 13, 1919) 893.

Policy—Misrepresentation of Age by Agent—Recovery:

Where insured did not read the life policy and was induced to accept it without reading by the agent's conduct in representing that the policy had been issued in accordance with the application as correctly stating the insured's age, the clause contained in the policy, limiting the amount of recovery in case of misstatement of age by insured was not applicable, although the application, drawn up by the agent, did in fact misstate the age and though it expressly stipulated that the insurer should not be bound by representations of the agent.

[Judgment in accordance with opinion.]

Walker v. Illinois Bankers' Life Assn. (Ark. S. C.):

215 Southwestern Reporter (December 24, 1919) 598.

Life Insurance—"Old Line Life Insurance"—Statute:

"Old Line Life Insurance," is, in view of Rev. St. 1919, Sec. 6968, insurance on a level or flat rate plan, where for a fixed premium, payable without condition at stated intervals, a certain sum is to be paid upon death without conditions.

Same—Same—Attachment of Application:

Rev. St. 1919, Sec. 6978, requiring the attachment to a stipulated premium plan policy of a copy of the application thereof, or endorsement of its substance upon the policy, does not apply to life insurance companies, doing a level rate or "Old Line" business.

Action on Policy—Exhibit—Pleading:

Although, according to the allegations of the petition, the

life policy sued on was filed therewith as an exhibit, it became no part of the pleading.

[Judgment for plaintiff below. Here reversed in favor of company.]

Mattero v. Central Life Ins. Co. (St. Louis C. A.):

215 Southwestern Reporter (December 24, 1919) 750.

Agent's Contract—Termination:

Where the contract of a life insurer's soliciting agent stipulated that such contract was made on the basis of his writing \$3,000.00 business per month, and that it might be terminated at any time, without notice if such condition was not fulfilled, mere failure to write the monthly amount would not terminate the agency without affirmative action by the insurer.

Service on Agent—Failure to Notify Principal—Default:

In view of Civ. Code, Sec. 34 O, 518, the mere failure of the authorized agent of defendant life insurer, in the county of suit, on whom summons was served, to notify the general agent or general manager of insurer of such fact, was not ground for setting aside default judgment against insurer.

[Judgment for plaintiff below. Here affirmed against company.]

Iroquois Life Ins. Co. v. Thomas (Ky. C. A.):

215 Southwestern Reporter (December 24, 1919) 818.

Policy—Incontestable Clause—Time:

Where life policy provided that "after one year from date" if premiums have been duly paid, it shall be incontestable and by its concluding clause recited that it had been caused to be signed November 15, 1916, was on June 16, 1916, delivered to insured with a receipt for premium for interim insurances from June 1, 1916, to November 15, 1916, and the receipt for first premium on policy recited, "which is hereby rendered in force from the date of this payment," to November 15, 1917, the year for contest began to run then and not from the date of the policy.

Same—Same—Estoppel:

Where an insurance company after death of the insured brings suit to enjoin action on a life policy, alleging as grounds for equitable relief that the policy would become incontestable a year from its date and that action on the policy was being delayed until expiration of the year, the company is estopped to claim in that suit that the running of the year for contest was suspended by insured's death.

[Judgment in accordance with opinion.]

Jefferson Standard Life Ins. Co. v. Wilson (U. S. C. C. A.):

260 Federal Reporter (December 25, 1919) 593.

Application—Misrepresentation—Evidence Considered:

Applicant for life insurance is not chargeable with misrepresentation in his application because he omitted from

his statement of previous illness of diseases, temporary affections, such as colds from which he recovered, where his answers were made in good faith.

Same—Same—Same:

A statement by applicant for life insurance that he had not consulted or been treated by a physician during the previous five years, when, in fact, he had been treated or prescribed for each year for supposed temporary illnesses, was a misrepresentation which, under the terms of his contract of insurance, invalidated policy.

[Judgment in accordance with opinion.]

Mutual Life Ins. Co. of N. Y. v. Hurmi Packing Co.
(U. S. C. C. A.):

260 Federal Reporter (December 25, 1919) 641.

Appeal and Error—Directed Verdict:

Where a verdict is directed for the defendant and exceptions thereto is brought to this court by the plaintiff, the direction of the verdict will be affirmed where it appears from all the evidence, both for the plaintiff and defendant, with all reasonable deductions therefrom, that the verdict was demanded.

Same—Evidence—Harmless Error:

In an action on policy where the trial court ruled certain evidence out, it was *Held*, That the trial judge did not err, and had the evidence been admissible, its rejection would not have been reversible error, since with the testimony in, the evidence would, nevertheless have demanded a verdict in favor of the defendant.

Action on Policy—Cause of Death—Burden of Proof:

Where the policy insured against loss "from bodily injury effected solely through external violence and accidental means," is incumbent upon the plaintiff in an action thereon to show that in the act which preceded the injury alleged to have caused insured's death, something "unforeseen, unexpected, or unusual, occurred."

Same—Same—Evidence:

In an action on an accident policy, the allegation that the insured met his death "as the result directly and independently of all other causes of bodily injury, effected solely through external violence and accidental means" may be sustained by proof of circumstances, as well as by direct evidence, but where the proving facts considered in connection with the defense facts developed upon cross examination, were not sufficient to make a jury case, the court did not err in directing a verdict for the defendant.

Same—Same—Presumption:

In an action on a policy of accident insurance covering loss "from bodily injury inflicted solely through external violence and accidental means," there is no legal presump-

tion that death resulted from accident, but if there is any presumption, it is that death resulted from natural causes.

[Judgment for company below. Here affirmed in favor of company.]

Johnson v. Aetna Life Ins. Co. (Ga. C. A.):

101 Southeastern Reporter (December 27, 1919) 134.

Action on Policy—Policy:

Where administrator brings action against beneficiary in a policy on the life of the deceased to substitute the estate of deceased as beneficiary, the beneficiary having murdered the deceased and it having been adjudged that the administrator was entitled to such relief, such beneficiary is not a necessary party in an action by the administrator against insurer to recover the amount of the policy.

Same—Application—Beneficiary:

The insured applying for insurance on his own life may designate any person as his beneficiary, regardless of the relationship between him and the beneficiary, whether or not the beneficiary has an insurable interest in insured's life, so that a statement in his application to the effect that beneficiary was a cousin was not material to the risk and was but a representation and not a warranty.

Same—Murder by Beneficiary:

Where the policy permitted an assignment or surrender without beneficiary's consent and provided that payment was to be made to beneficiary in case he survived insured, "otherwise to the estate of the insured" and the policy was taken out at the instance of the insured himself, the insurance should not become forfeited, but should be paid to the estate of assured where the beneficiary disqualifies himself by murdering the insured.

Same—Proof of Death—Complaint:

Service of complaint by administrator of insured upon insurer in an action against the beneficiary for reformation constitutes a written proof of death.

Same—Same—Waiver:

Insurer waived defense that there was no written proof of death by failing to assert it in an action by administrator of insured against the beneficiary, who had murdered insured, to reform the policy, substituting the estate of the insured, as beneficiary, although insurer was not a party.

Same—Death While Quarreling—Burden of Proof:

In an action on a life policy, the burden was upon the insurer to establish its defense that insured was killed while quarreling or fighting within the meaning of the policy.

Same—Same—Same—Evidence:

Where a provision as to quarreling or fighting applies to the question of fatal injury to insured, yet where it clearly appears that the "quarrel" was all done by the person who killed insured and was not provoked or participated in by

the insured and the killing was an unprovoked, unwarranted crime of homicide, no defense is established under this provision of the policy.

Same—Recovery—Interest:

Where the life insurance policy provided that the amount of policy was to be paid 90 days after notice of death, interest should be charged from 90 days after service of a verified complaint upon the insurer in an equity action against the beneficiary to have the policy reformed.

[Judgment for plaintiff below. Here affirmed against company.]

Welch v. Travelers Insurance Co. (N. Y. S. C.):

178 New York Supplement (December 29, 1919) 748.

Life Insurance—False Representations of Agent—Premium Note:

Where agent of insurer misrepresented the surrender value of the policy at the end of the 10th year and plaintiff was thereby induced to give his consent to his son's taking out the insurance the endorsee of the premium note having sued plaintiff on note and recovered judgment, plaintiff could not recover the amount unless he was induced to execute the note by the fraudulent representations.

[Judgment for plaintiff below. Here reversed in favor of company.]

Indiana Natl. Life Ins. Co. v. Butler (Ky. C. A.):

215 Southwestern Reporter (December 31, 1919) 949.

Action on Policy—Days of Grace—Military Service:

The clause of a life insurance policy granting 31 days of grace for the payment of premiums after the payment of the first, applied to provision requiring written permit to be obtained and an extra premium to be paid in case of insured entering into military service, the two provisions not being entirely clear and the company having construed the provision for 31 days of grace during which the policy remained in force as applying to military service provision.

Same—Contract—Construction:

Where two constructions are possible, that construction given clauses of a life insurance policy by the insurer itself must be considered as very persuasive.

[Judgment for plaintiff below. Here affirmed against company.]

Carlson et al. v. Scandia Life Ins. Co. (Wis. S. C.):

174 Northwestern Reporter (January 2, 1920) 896.

Action on Policy—Accidental Injury—Burden of Proof:

In an action to recover under a policy of accident insurance, it is incumbent upon the plaintiff to prove the accidental character of the injury as laid in his petition.

Same—Evidence—Verdict:

Under the evidence the jury would have been authorized to find that the preponderance of the testimony established

the plaintiff's contention that the fatal infection originated at the place upon the ear where the accidental abrasion had occurred. If, therefore, the direction of the verdict in favor of the defendant had been based upon the contrary theory that it must have originated in the throat as contended for by the defendant, such action would not have been justified.

Policy—Death—"Accidental":

Where the evidence shows that the infection occurred either at the time accidental wound is received or that it has followed as an actual and ordinary consequence, the death which may ensue from such injury and infection can properly be accounted as accidental within the meaning of the terms of the policy.

Same—Same—Proximate Cause:

If one who has knowingly sustained an accidental abrasion upon the exposed surface of his body, nevertheless continues to bring himself in contact with and to treat a patient effected with a virulent type of contagious disease, such as is capable of being transmitted through immediate proximity with such exposed wound or abrasion and as the result of such voluntary risk, he thus becomes infected with and contracts the disease and it results in his death, the proximate cause thereof cannot properly be said to be the original "bodily injury sustained and effected through direct external violent and accidental means exclusive and independently of all other causes."

Action on Policy—Pleadings—Construction:

All pleadings must receive a construction in accordance with the natural intendment of the words and language used and as a general rule must be construed most strongly against the pleader. However, if a petition be subject to two constructions and there be no demurrer thereto, and the case has proceeded to trial and resulted in a verdict, then, in determining whether the case has been proven as laid, that construction will be adopted which is most favorable to the assertion of a cause of action in the plaintiff's favor.

[Judgment for company below. Here affirmed in favor of company.]

Bell v. State Life Ins. Co. of Indianapolis, Ind. (Ga. C. A.):

101 Southeastern Reporter (January 24, 1920) 541.

Life Insurance—Default in Premium—Statutes:

Prior to the amendment in 1895 of Rev. Stat. 1889 Sec. 5859, a life insurance company and an insured could not avoid the effect of Sec. 5856-5858, relating to non-forfeiture of policy on failure to pay premiums by agreement to substitute the reserve values fixed by the laws of the State of the insurer's origin.

Same—Policies—Laws:

A policy of life insurance is governed by the laws in force at the time the policy is issued.

Same—Same—Paid-up Insurance:

The proviso in the amendment of 1895 to Rev. Stat. 1889, Sec. 5859, would not automatically transfer a foreign policy of life insurance which did not provide for temporary or paid-up insurance of a value equal to that under the law, though the law of the insurer's state authorized such value in case of default of the fourth annual premium into a paid-up insurance of the net value prescribed in Sec. 5856.

[Judgment for plaintiff below. Here reversed in favor of company.]

Alford v. New York Life Insurance Co. (Miss. S. C.):

216 Southwestern Reporter (January 28, 1920) 754.

Policy—Beneficiary—Vested Interest:

Where the policy contains no provision for change of beneficiary the issuance of the policy confers immediately a vested right upon and raises an irrevocable trust in favor of the person named, as beneficiary, and no act of insured can impair such right without beneficiary's consent.

Same—Same—Same:

Where there is a provision in the policy for change of beneficiary, insured may change beneficiary without the consent of that beneficiary named in the policy, as in such case there is no vested right.

Same—Same—Beneficiary:

A life insurance policy may be assigned by concurrent act of insured and beneficiary as security for a debt.

Same—Insured's Interest—Assignment:

The insured, without the beneficiary joining, can assign the interest he has in a policy of life insurance.

Same—Assignment—Change of Beneficiary:

Having assigned all his beneficial rights in a life insurance policy, insured could not designate a new beneficiary.

[Judgment in accordance with opinion.]

Missouri State Life Ins. Co. v. California State Bank, et al. (Kansas City C. A., Mo.):

216 Southwestern Reporter (January 28, 1920) 785.

Policy—Maturity—Delay in Payment:

At the maturity of a 15-year endowment policy, the amount due being in dispute, company sent to assignee of policy draft for its admitted liability thereon, payable to both original insured and assignee, with payment further conditioned upon the execution by them both of a full release of any further claims or demands on account of the policy. *Held*, That such acts did not amount to an unconditional tender of admitted debts and the company was thus liable for delay.

Same—Agent's Statement—Authority:

Where express limitation on agent's authority that no statements or promises by them should bind the company unless written on the application, was contained in an en-

dowment policy itself and in the application as well, the assignee of the policy was bound thereby and could not claim to have relied upon statements of agents as to the amount of dividends there would be on the policies at its maturity, where no such statements appeared in application on policy.

[Judgment for plaintiff below. Here affirmed against company.]

Manhattan Life Ins. Co. v. Stubbs (Tex. C. C. A.):

216 Southwestern Reporter (January 28, 1920) 896.

Annotation—Breach of Loan Accommodations in Insurance Policy:

Under the above heading appears annotation to the case of *William P. Hubbard v. Equitable Life Assurance Assoc.*, heretofore reported in 31 Insurance Digest 150; 2 A. L. R. 886.

Annotation—Validity Construction and Effect of Provision in Life or Accident Policies in Relation to Military Service:

Under the above heading appears an annotation to the case of *Kelly v. Fidelity Mutual Life Insurance Company*, heretofore reported in 172 Northwestern Reporter 152; 4 A. L. R. 846.

Action on Policy—Contract:

A policy for life insurance, including the application and note for first premium, together constitute the contract.

Same—Same—Validity:

The parties to insurance contract may incorporate therein whatever conditions they please, provided the same be not in contravention of law or public policy.

Contract—Ambiguities—Construction:

If there is any ambiguities in a policy which may reasonably be solved, by either one of two constructions, that interpretation shall be adopted which is most favorable to the assured.

Policy—Forfeiture—Waiver:

A note given in part payment of premium provided that its non-payment should terminate the policy and that same might be collected without reviving the policy and the application provided that only such part of the premium which was paid in cash should be retained by the insured. It was *Held*, That the provision in the application governed and that collecting a note after maturity waived forfeiture.

Same—Same—Same:

The provision of a policy of life insurance that the policy would be forfeited upon non-payment of a premium note is for the benefit of the insurer and may be waived by it.

Same—Same—Same:

Where the policy provided that it should ipso facto terminate upon default in payment of premium note, insurer

waived such provision by correspondence with insured in which it recognized the continued existence of the policy and discussed the desire of insured to reduce it in amount.

[Judgment for plaintiff below. Here affirmed against Company.]

Faris v. American Natl. Assur. Co. (Cal. D. C. A.):

185 Pacific Reporter (February 2, 1920) 1035.

Action on Policy—Statute—Application:

The provision of Sec. 1, c. 212, Laws of 1913, making it unlawful for any life insurance company, other than fraternal doing business in the state, to forfeit or cancel a policy on account of the non-payment of premiums without first giving notice in writing to the holder of any such policy of its intention to forfeit or cancel the same, is *Held*, to include industrial policies issued upon the payment of monthly or weekly premiums.

Policy—Provision for Waiver of Statutory Provisions:

The policy of insurance sued on was an industrial policy, which made it the duty of the company's agent to call upon the insured on Monday of each week to collect a weekly premium of 25 cents. Printed upon the policy with a rubber stamp was a provision as follows: "The insured under this policy, by the acceptance hereof, expressly waives, both for himself and for any other person who has not or who may subsequently acquire any interest herein, the giving of any notice provided for by c. 212 of the Laws of 1913 of the state of Kansas, and consents that said policy may be lapsed or forfeited for non-payment of premium as herein provided." *Held*, That this provision of the policy was void.

Action on Policy—Cancellation—Evidence:

Evidence considered, it was *Held*, That insured and insurance company had not by mutual agreement abandoned and canceled the policy and that it was in full force and effect at the time of the death of the insured.

[Judgment for plaintiff below. Here affirmed against Company.]

Reynolds v. Metropolitan Life Ins. Co. (Kan. S. C.):

185 Pacific Reporter (February 2, 1920) 1051.

Reinsurance Contract—Rights of Beneficiary:

A reinsurance contract between defendant and the insurer of the life of plaintiff's intestate made under Burns Ann. St. 1914, Sec. 4739, and made for the benefit of the policyholder of the latter company, after the death of a policyholder, entitles his beneficiary to maintain an action on such contract.

Same—Pleading:

In an action by beneficiary on a life policy against a reinsurer in the absence of a reinsurance policy, the complaint must allege that the contract of reinsurance was oral or written.

Action on Policy—Proof of Death—Pleading:

Where a life policy provided that failure to furnish proof of death within one year barred recovery thereon, the liability of insurer did not attach ipso facto upon insured's death, but depended on the furnishing of such proof of death and an allegation that assured performed all the conditions required by the policy falls short of alleging performance of such condition.

Same—Same—Same:

In an action on a life insurance policy against a reinsurer the contention that the complaint stated facts excusing plaintiff from presenting proof of death to original assurer as required by the policy was not applicable where the reinsurance contract was not made a part of the complaint.

Policy—Requirement of Proof of Death—Validity:

Parties to a contract of life insurance could agree that "the company be furnished at its office in the city of Indianapolis with proof of death," and that failure to comply therewith would bar recovery.

Same—Proof of Death—Compliance:

Failure of plaintiff, in action against reinsurer on a policy of life insurance to furnish proof of death within the required time, is not excused because reinsurer did not maintain an office in the state of Indiana to plaintiff's knowledge.

Same—Same—Same:

Insured's instantaneous death was not an act of God which would excuse failure to make proof of death within required time.

Action on Policy—Practice—Reply—Departure:

Where in an action on a life insurance policy, the complaint alleged that insured performed the terms and conditions of policy, and the reply admits that he did not so perform and alleged a waiver of performance, a demurrer to reply on ground of departure should have been sustained.

Consent of Insured in Mutual Company to Reinsure—Statute:

No contract of reinsurance under Burns Ann. St. 1914, Sec. 4753 was possible between defendant reinsurer and the original insurer, a mutual company owned and controlled by its policyholders until authorized by two-thirds of the policyholders attending a meeting called for that purpose.

[Judgment for plaintiff below. Here reversed in favor of company.]

Federal Life Ins. Co. v. Barnett (Ind. App.):

125 Northeastern Reporter (February 3, 1920) 522.

Policy—Option—Presumption:

Where a 19 payment life insurance policy provided various options which might be exercised by the insured at the expiration of the premium period and the final option pro-

vided that the insured might continue it as a paid-up life contract without payment of further premiums, and insured took no steps to obtain the surrender value of the policy, it is presumed that he continued it as a paid-up policy.

Same—Same—Measure of Recovery:

Where the insured did not exercise option under the policy to obtain cash surrender of the policy on payment of last premium, upon his death, after expiration of the premium period, his beneficiaries were not entitled in addition to the face of the policy to a sum equal to its loan value.

[Judgment for plaintiff below. Here affirmed.]

Choate et al. v. Provident Savings Life Assur. Soc.
(Ky. C. A.):

216 Southwestern Reporter (February 2, 1920) 1073.

Action on Policy—"Death While Engaged in Military Service"—Liability:

In an action upon an insurance policy, where it appeared that the insured had enlisted in the Navy Department during the recent war, and had been assigned to Dunwoody Institute in Minneapolis for instruction and training, and while so assigned had contracted influenza, from which he died after a brief illness in the city hospital at Minneapolis, the insurance company defended on the ground that the insured had not obtained a permit under the following clause of the policy: "If within five years from date hereof, the death of the insured shall occur while engaged in military or naval service in time of war without previously having obtained from the company a permit therefor, the company's liability shall be limited to the case premiums paid hereon for the three years from date of issuance and thereafter to the legal reserve on this policy." It was *Held*, That in view of the other provisions of the policy with respect to double indemnity for accidental death and disability benefits, the above-quoted provision does not exempt from liability for the face of the policy where the death of the insured was not occasioned by extra hazard incident to military or naval service.

Policy—Repugnancy—Construction:

Where repugnancy exists between different clauses of an insurance policy the whole should, if possible, be construed, so as to conform to an evident consistent purpose.

Same—Same—Same:

Where status or occupation are not clearly made the basis for exemption from liability under an insurance policy, and where the language employed indicates a desire to provide only against extra hazard to avoid forfeiture of insurance, the policy will be construed to the latter effect.

[Judgment for plaintiff below. Here affirmed against company.]

Myli v. American Life Ins. Co., of Des Moines, Ia. (N. D. S. C.):

175 Northwestern Reporter (February 6, 1920) 631.

"Renewal Policy"—Forfeiture—Notice:

Within N. C. laws, 1909, c.884, a renewal policy could not be declared forfeited or lapsed for non-payment of premiums without notice to insured.

Policy—Premium—Renewal:

Within N. C. laws, 1909, c.884, providing that no insurance corporation shall, within one year after default in the payment of any premium declare forfeited or lapsed any policy hereafter issued or renewed unless notice be given insured, a policy is renewed when the premium is paid.

Forfeiture—Notice—Waiver:

A note executed by insured for payment of premiums, which was intended and expressed to be a waiver of the statute requiring notice of forfeiture to insured, was illegal and without force and effect as a waiver of the protection of the policy.

Policy—Wrongful Cancellation—Damages:

Where a policy of life insurance was wrongfully canceled by insurer without giving notice required by N. C. laws 1909, c.884, the measure of damage for such wrongful cancellation is the present worth of the principal sum less premiums due.

[Judgment in accordance with opinion.]

Garland v. Jefferson Standard Life Ins. Co. (N. C. S. C.):
101 Southeastern Reporter (February 7, 1920) 616.

Action on Policy—Application—False Answers:

Whether insured in his application had knowingly made false answers to questions as to whether he had suffered from any disease of the lungs or had been treated by a physician for any such disease was for the jury.

Same—Same—Same:

In order to defeat recovery on a policy of life insurance on the ground of false answer by insured in application as to existence of lung disease, insurer must prove that such answer was false and made with intent to deceive and defraud insurer.

Same—Same—Same:

Applicant, who answered question whether he had disease of the lungs in the negative, was not bound at his peril to believe that he had such disease merely because doctor had so diagnosed his ailment.

Same—Fraud—Evidence:

Evidence to establish fraud in procuring policy of life insurance must be clear and convincing.

Application—Disease—Estoppel:

Notwithstanding any false and fraudulent answers made by applicant for policy of life insurance, after the insurer's medical examiner has passed such applicant, with knowledge of defects in his body, insurer may not thereafter contend that the insured was unsound.

Policy—Breach of Contract—Recovery:

A contract to be performed after the death of one of the parties should not after the death of such one be annulled by the other party except upon breach of the letter of the agreement.

[Judgment for plaintiffs below. Here affirmed against company.]

Wingo v. New York Life Ins. Co.;

Maxwell v. Same (S. C. S. C.):

101 Southeastern Reporter (February 7, 1920) 653.

Action on Subscription Note—Pleading:

In an action by the insurance commissioner of the state of Georgia on a note given by a subscriber to the stock of an insolvent insurance company, such commissioner may anticipate the defense of fraud by setting out in the complaint that under the laws of Georgia, after insolvency, a subscriber cannot set up fraudulent representations inducing the contract of subscription as against creditors who became such subsequent to the subscription, and that the insurance company was insolvent and had incurred large obligations since the subscription.

Same—Same:

In an action between insurance commissioner of the state of Georgia on a note given in payment of subscription to the stock of a Georgia company which had become insolvent, where the commissioner set up that the company had incurred obligations since the subscription and was insolvent for the purpose of anticipating the defense of fraud, averments in the plea setting up fraud, and that the subsequent creditors had not requested or authorized the commissioner to sue, were *held* insufficient to rebut the anticipatory allegations of the company, and such plea was subject to a demurrer.

Same—Same:

In such action averments in the subscriber's plea that the subscriber has not received any benefits from the insurance company and had not participated in any stockholder's meetings, etc., were insufficient to raise any issue, and such plea was subject to demurrer.

[Judgment for defendant below. Here reversed in favor of insurance commissioner.]

Wright, Ins. Com'r. of Georgia v. Hix (Ala. S. C.):

83 Southern Reporter (February 7, 1920) 341.

Policy—Contract—Mistake:

Though an error of \$3,000 in the statement of the amount of the reserve would be a cause for avoiding the contract if it had not been fulfilled, where insured had the benefit of the insurance during 20 years, it would not be so avoided.

Same—Same—Same:

Evidence considered, it was *Held*, That the writing in the panel on the back of the policy, showing the amount of the

reserve \$8,646, instead of the correct figures, \$5,646, was simply an error on the part of the policy writer and that the insured should not profit by such mistake.

Mutual Company—Discrimination:

A mutual company could not legally discriminate in favor of one or some of the policyholders to the prejudice of others.

[Judgment for plaintiff below. Here affirmed against company.]

Rougon v. Equitable Life Assur. Soc. of United States (La. S. C.):

83 Southern Reporter (February 14, 1920) 434.

Policy—Loan—Cancellation:

Where notice for loans on paid-up life policy provided that if the policyholder failed to pay the note or interest when due, the company, without further notice or demand, might cancel the policy, apply the full cash surrender value on the note and pay the balance on demand to the parties entitled thereto, notice of cancellation and payment of surrender value was not necessary to render cancellation effective.

Same—Same—Same:

Provision in notes for loans on paid-up life policies for cancellation without notice or demand on non-payment of the loans is valid.

Cancellation—Delay—Waiver:

A delay of 45 days after default in canceling the policy was not a waiver of the right contained in notes for loans to cancel without notice.

[Judgment in accordance with opinion.]

Stevens et al. v. Mutual Life Ins. Co. of New York (N. Y. C. A.):

125 Northeastern Reporter (February 17, 1920) 682.

Policy—Non-Payment of Premium—Forfeiture:

Where insured had paid no part of his life insurance premium or of notes given therefor, the policy became void in accordance with its terms.

Action on Policy—Directed Verdict—Evidence:

In an action upon a life policy, documentary evidence consisted of application, policy, premium, notes, etc., made such complete defense to beneficiary's prima facie case as to require a directed verdict in favor of defendant insurer, notwithstanding that such documentary evidence was pieced out by oral evidence.

[Judgment for plaintiff below. Here reversed in favor of company.]

Kazee v. Kansas City Life Ins. Co. (Mo. C. A.):

217 Southwestern Reporter (February 18, 1920) 339.

Agent and Agency—Commissions—Evidence:

In an action by a life insurance agent for unpaid commissions earned by himself and for assignors, evidence in

favor of one agent, plaintiff's assignor, consisting of a transcript for defendant insurance company's books, evincing a total amount of commissions due the agent constituted a prima facie case of assigned claim.

Same—Same—Same:

A life insurance agent bringing suit on his own and assigned claims for commissions earned, having shown knowledge of a witness in possession of records of the company and their possession by him, and having questioned him concerning certain entries, defendant company was also entitled to inquire fully concerning the matter.

Court—Contract:

Courts in the absence of an attack on their validity may not interfere with such contract as may be entered into between parties nor may they make new contracts for them.

[Judgment for plaintiff below. Here reversed in favor of company.]

Pearce v. Metropolitan Life Ins. Co. (Mont. S. C.):

186 Pacific Reporter (February 23, 1920) 687.

Policy—Insurable Interest—Effect:

One having no insurable interest in the life of another cannot procure a policy of insurance on such life; when so procured, such policy is void at its inception.

Same—Same—Same:

One may insure his own life for the benefit of another having no insurable interest therein.

Same—Same—Insurable Interest:

The holder of a policy of life insurance payable to his estate having a surrender value of \$2,040.40 could make a valid assignment of it by absolute sale for \$2,500.00 cash to one having no insurable interest in his life.

[Judgment for plaintiff below. Reversed by appellate court and appellate court decision here affirmed.]

Hawley v. Aetna Life Ins. Co. (Ill. S. C.):

125 Northeastern Reporter (February 24, 1920) 707.

Policy—Instruction:

Stipulations in life insurance policies exempting the insurer from liability under certain conditions are always construed strictly against the insurer, for the reason that such policies are issued on printed forms prepared by experts at the instance of the insurer, the insured having no voice in their preparation.

Same—"Engaged in Military Service"—Instruction:

Where policy of life insurance exempted insurer from liability except for the reserve under the policy for "death while engaged in military and naval service in time of war or consequence of such service" and insured had enlisted in the army, died from influenza contracted while enroute to a concentration camp to await assignment to a flying school for training, it was *Held*, That such death was not in the

exemption; the word "engaged" implied death caused by performing some duty in the military service as distinguished from merely a period of time while insured was in the service.

[Judgment for company below. Here reversed against company.]

Benham v. American Central Life Ins. Co. (Ark. S. C.):
217 Southwestern Reporter (February 25, 1920) 462.

Policy—Rescission—Evidence:

Where insured signing an antedated note upon the receipt of an antedated policy of life insurance and thereupon wrote the company that he would not accept an antedated policy and the company replied that he had agreed to accept such policy and must keep it, and insured said nothing further relative to the matter and did not offer to return the policy, he thereby apparently acquiesced and was liable on such note.

[Judgment in accordance with opinion.]

Sterling v. Bank of Lilly (S. D. S. C.):

175 Northwestern Reporter (February 27, 1920) 990.

Action on Policy—Condition Precedent—Waiver:

Evidence considered, it was *Held*, That statements and conduct of insurer's agent would not constitute waiver of conditions precedent to the taking effect of the policy of life insurance.

[Judgment for company below. Here affirmed in favor of company.]

Green v. Prudential Ins. Co. of America (Kan. S. C.):

186 Pacific Reporter (March 1, 1920) 970.

Action on Policy—Incomplete Change of Beneficiary—Recovery:

The insured, by the terms of a life insurance policy, retained the right to change the beneficiary by a prescribed method which included an endorsement on the policy, presented to the company a writing expressing his desire to make the insurance payable to his estate and also to surrender all claims on payment of the amount provided in that contingency. Because of the loss of the policy the company required an indemnifying bond as a condition to its taking favorable action on such application. While negotiations were pending with reference thereto the insured died without the bond having been given. In a contest between the original beneficiary and the administrator of the insured, it was *Held*, That inasmuch as the requisite steps to that end had not been taken and the insurer had not acquiesced in or recognized any change of beneficiary, during the life of insured, none had taken place and the original beneficiary was entitled to the proceeds of the policy.

Same—Contract—Instruction:

Where a written application for life insurance is made a part of policy issued thereon, the two are to be construed

as parts of a single contract and where such policy was payable in installments and on its face designated the wife of insured as the beneficiary while the application provided that on the death of the wife, the remaining installments should be paid to his daughter, the effect is to be given to both provisions by allowing the wife to recover the payments accruing up to the time of her death and the daughter the remainder.

[Judgment in accordance with opinion.]

Hurd v. Penn Mut. Life Ins. Co. (Kan. S. C.):

186 Pacific Reporter (March 1, 1920) 998.

Policy—Change of Beneficiary—Requirements:

Where the policy prescribes the manner in which the right to change the beneficiary is to be exercised, and requires that a written notice be sent to the home office of the company accompanied by the policy and suitable endorsement thereon, these requirements must be fulfilled and such change takes effect only when it is endorsed by the company on the policy.

Same—Contract—Parties:

The relation of parties to a policy of insurance are contractual and must be determined by its terms.

[Judgment in accordance with opinion.]

Kress v. Kress (Phila. Co. C. P., Pa.):

77 Legal Intelligencer (March 5, 1920) 170.

Policy—Reinstatement—Effect:

Where policy of life insurance gave insured the right to have policy reinstated after default in payment of premium by performance of certain conditions, where insured complied with such conditions, the original policy was continued in force and a new policy was not created.

Same—Same—Waiver:

Insured may waive his right to reinstatement in original policy and enter into a contract for a new policy with different conditions.

Same—Same—Definition:

Under the provision of the policy of life insurance whereby insurer agrees to "reinstate" policy after default in payment of premium, upon performance of stipulated conditions, insurer has no right to exact other conditions, the agreement to "reinstate" not being an agreement to re-insure under another and different contract, but implying the right of insured to be placed in the same condition that he occupied before forfeiture.

Same—Same—Equity:

Where life policy gave insured right to reinstatement after default in payment of premium, upon performance of stipulated conditions, insured having performed such conditions, could by bill in equity compel reinstatement of policy as it was previous to default.

Same—Reinstatement—Incontestable Clause:

A life policy was not void because of suicide one year after reinstatement, though application for reinstatement specified that policy should be void if insured committed suicide within one year after reinstatement, since such reinstatement merely gave binding force to the original policy, which was incontestable at time of suicide, and because such provision in the application for reinstatement was without consideration, insured having been given the right by his original policy to have policy reinsured upon his performance of stipulated conditions.

Action on Policy—Pleading:

Pleas, replications and rejoinders should be construed with reference to the complaint.

[Judgment for plaintiff below. Here affirmed against company.]

Mutual Life Ins. Co. of New York v. Lovejoy (Ala. S. C.):
83 Southern Reporter (March 6, 1920) 591.

Action for Damages—Agent's Discharge—Defense:

Any reasons for the discharge of agent which may have existed in the mind of the insurance company's general agent in discharging him, not having been given in writing, as required were immaterial as a defense to agent's action against general agent for damages for wrongful discharge.

Same—Same—Measure of Damages:

Agent's measure of damages for wrongful discharge by general agent was the amount of salary he would have earned during the term of his contract less the amount his employer might show he had earned or should have earned during the same period of time in other employment secured after such discharge.

Same—Same—Same:

Where agent for life insurance company operating under a ten years' contract was wrongfully discharged by general agent, damages for \$8,500 at the rate of \$850 a year for the term of his employment were excessive.

Judgment for plaintiff below. Here affirmed against general agent.]

Mortimer v. Bristol (N. Y. S. C.):
180 New York Supplement (March 8, 1920) 55.

Action on Policy—Military Service—Waiver:

A provision of a life insurance policy as to insured not engaging in military service without the consent of insurer, was not waived by insurer writing to the mother of insured, instructing her to take up the matter of consent with the local agent and by such agent's undertaking to call insurer's attention to the matter and to procure insured's signature to application.

[Judgment for company below. Here affirmed in favor of company.]

Sandstedt v. American Cent. Life Ins. Co. of Indianapolis, Ind. (Wash. S. C.):
186 Pacific Reporter (March 8, 1920) 1069.

Action on Policy—Preliminary Insurance—Election of Company:

Where a receipt given for first quarterly premium paid at time of application and medical examination, provided that on such payment insurance shall be effective from examination and policy shall be issued "provided the said company in its judgment shall be satisfied as to my insurability on the date of said medical examination," it was *Held*, That should the company reject the application on the ground that the applicant is not insurable and returns the premium paid, no liability arises. However, if not so rejected, such applicant is insured from the date of the medical examination.

Same—Medical Examination—Conclusiveness:

Ia. Code, Sec. 1812, making medical examiner's report conclusive on insurer unless procured through fraud does not limit, prior to the issuance of a policy, the insurer's investigation as to the applicant's insurability to the examination of its local medical examiner, but applies only after a policy has been issued.

[Judgment for company below. Here affirmed in favor of company.]

Reynolds v. Northwestern Mut. Life Ins. Co. (Ia. S. C.):

176 Northwestern Reporter (March 12, 1920) 207.

Action on Premium Note—Policy—Recovery:

Where the insurer sues the insured upon unpaid past-due promissory notes given for the first annual premium on a policy of life insurance, which was delivered to and accepted by the insured, a recovery for the full amount of the notes with interest and attorney's fees, cannot be defeated on the ground of a failure of consideration, total or partial, in that the policy provided that it should not become of force until the first premium had actually been paid, and that a failure to pay any premium note when due would avoid the policy.

Same—Fraud—Evidence:

In an action by insurer against insured upon unpaid past-due promissory notes given for first annual premium on a life insurance policy, the defense plea of fraud in the procurement of the notes was not supported by any evidence.

[Judgment for company below. Here affirmed in favor of company.]

Graham v. Maryland Mut. Life Ins. Co. (Ga. C. A.):

102 Southeastern Reporter (March 13, 1920) 32.

Policy—Wills—Instruction:

A policy of life insurance for the benefit of the family of insured is testamentary in its character, and in the designation of the beneficiaries the language of the policy should receive the same construction as if used in a will.

Same—Assignment to Creditors—Surety:

An assignment of a life insurance policy to creditors without any consideration passing at the time, will be considered as an assignment as security, and if the debts are

paid, the insured will be entitled to a return of the policy or to such portion of its proceeds as may be left after the discharge of the debts.

Same—Beneficiaries—Vested Interest—Subrogation:

Beneficiaries under a life policy have no vested interest which entitles them to be subrogated to the rights of creditors whose debts the proceeds of the policy paid.

[Judgment in accordance with opinion.]

Landrum et al. v. Landrum's Adm'r. (Ky. C. A.):

218 Southwestern Reporter (March 17, 1920) 274.

Action on Policy—Application—False Representations:

Where insured stated in his application that he had no other illness except indigestion, from which he had fully recovered, and that he had consulted a certain physician, when in fact he had been treated for gastric ulcer which became cancerous and resulted in his death, and had received medical attention other than that mentioned in the application, the policy was void.

Same—False Representations—Evidence:

Where the undisputed evidence establishes false representations as to previous illness, applicant's intention to deceive will be inferred.

Policy—Change of Beneficiary—Power:

Where one procures insurance upon his life for the benefit of another, the policy and the money to become due thereunder, belong to the beneficiary named therein, and the insured has no power to change the interest of the beneficiary unless a power of revocation or modification is reserved by the terms of the policy, but where the contract so provides, the beneficiary may be changed at the instance of the insured, in which case no vested right exists in the beneficiary in the absence of facts or circumstances tending to establish an equitable interest in the proceeds of the policy.

Action on Policy—Admissions of Insured—Evidence:

Though in an action on a policy of life insurance, insured's admissions not so made as to be part of the res gestae are inadmissible against the beneficiary having a vested interest in the policy where such beneficiary has no vested interest therein, such admission are admissible.

Same—False Representations—Test:

In an action on policy of life insurance where insured pleaded avoidance of the policy on the ground of false representations as to previous illness, the true test is not whether insured thought he was suffering from this trouble or that when he consulted a certain physician previous to making his application, but whether his answers were true to the best of his knowledge and belief.

[Judgment for plaintiffs below. Here reversed in favor of company.]

Spaulding et al. v. Mut. Life Ins. Co. of New York (Vt. S. C.):

109 Atlantic Reporter (March 18, 1920) 22.

Policy—Delivery—Health:

Where a policy of life insurance provided that it should not take effect until issued and delivered by the insurer and the first premiums paid while insured's health, habits, and occupation were the same as described in the application, and at the times the policy was delivered to insured's mother, insured was ill in the hospital suffering with tubercular meningitis, from which disease he died in a few hours, though the policy was delivered it never became effective, and insurer was not liable thereon.

[Judgment for plaintiff below. Here reversed in favor of company.]

Guarascio v. Prudential Ins. Co. of America (Wash. S. C.):

187 Pacific Reporter (March 22, 1920) 405.

Policy—Ambiguity—Construction:

Where a policy of life insurance is ambiguous and admits of a construction favorable to the insured such construction will be enforced.

Same—Automatic Insurance—Grace:

Under a policy of life insurance granting 30 days grace in payment of premium and providing that if premium has not been paid within period of grace and policy has not been surrendered, the insurance will automatically continue for such term as is stated below (in this case, one month), it was *Held*, That the period of automatic continuing insurance began at the end of the grace period, so where insured who had paid first premiums only, died after the expiration of the grace period for the payment of the second premium, but within one month after expiration of grace period, the policy was in force at the time of his death.

[Judgment for company below. Here reversed against company.]

Mitchell v. Southern Union Life Ins. Co. (Tex. C. C. A.):

218 Southwestern Reporter (March 24, 1920) 586.

Action on Policy—Self Destruction—"Accident":

Self destruction inflicted purposely is not an "accident" within the meaning of the supplemental life insurance policy providing for double liability in case of accidental death.

Same—Accidental Death—Burden of Proof:

In an action by a beneficiary on a life policy providing for double liability in case of accidental death, the burden was upon plaintiff to prove that deceased came to his death by accident within the terms of the policy.

Same—Same—Same:

A clause, not in the same part of the life policy, in which insurer promises to pay upon the death of insured, to the effect that insurer will not be liable in the event of suicide, is in the nature of a condition subsequent, and which if relied on to defeat a recovery under the policy must be

pleaded and proved by the insurer; but, in a supplemental policy, providing for double liability in case of accidental death, it is for the beneficiary to plead that the death was accidental.

Same—Suicide—Pleading:

In an action on supplemental life policy providing for double liability in event of accidental death insurer under a general denial could introduce evidence that the death was purposely self inflicted and thereby defeat recovery on the double indemnity feature.

Same—Burden of Proof—Practice:

Though suicide clause in life policy might require beneficiary to plead a negative, failure to so plead would be only a defect of pleading which could not be raised upon introduction of evidence or after verdict, where no exception was taken to such omission.

Same—Admission—Same:

A petition by beneficiary under life policy and supplemental life policy providing double liability in case of accidental death, set up two distinct causes of action, one on the plain life policy and the other on the supplemental policy; and in such case where defendant set up suicide in its answer and then filed an admission under rule 31 for district courts (142 S. W. xiii) defendant did not thereby admit that death under the plain policy was an accident, although its effect was to admit that the death was accidental as far as the count on the supplemental action on the policy was concerned.

[Judgment for plaintiff below. Here reversed in favor of company.]

Federal Life Ins. Co. v. Wilkes (Tex. C. C. A.):

218 Southwestern Reporter (March 24, 1920) 591.

Internal Revenue—Dividends—Computation of Income:

Dividends which are required by Insurance Laws New York, Sec 83, to be paid by life insurance companies either to policyholders in cash or by way of credit upon premiums due from them, must be excluded in computing the company's income for taxation.

Same—Same—Depreciation of Securities:

In computing the income of an insurance company for taxation depreciation of securities taken for loan value during the year cannot be deducted where the depreciation was not realized by sale of depreciated securities.

[Judgment in accordance with opinion.]

New York Life Ins. Co. v. Anderson (U. S. D. C.):

262 Federal Reporter (March 25, 1920) 215.

Action on Policy—False Statements—Application—Recovery:

Where an application for life insurance covenants in his application that the statements made to the medical examiner are true and these statements are made a part of the contract of insurance and form the basis of the contract,

any variation in any of them which is material whereby the nature or extent or character of the risk is changed, will void the policy, whether the statements were made in good faith or fraudulently.

Same—Same—Questions for Jury:

The question of whether the variation in statements made to the medical examiner by insured is material or whether the nature or extent or character of the risk is changed, is a question of fact to be determined by the jury.

[Judgment for plaintiff below. Here affirmed against company.]

Southern States Life Ins. Co. v. Morris (Ga. C. A.):

102 Southeastern Reporter (March 27, 1920) 179.

Paid-up Policy—False Affidavit—Effect on Beneficiary:

Where insurer issued a paid-up policy which stipulated that the consideration had been paid by the beneficiaries, and agreeing to pay to beneficiaries a specified amount upon the death of insured and where insured later delivered policy to insurer upon receipt of the cash surrender value of the policy, upon insured's false affidavit that the beneficiaries were dead, the transaction did not surrender or cancel the policy.

Same—Same—Equity:

Where insured surrendered paid-up policy in receipt of cash value of policy by making false affidavit that the beneficiaries were dead, equity will not revive the policy so surrendered to insured, remedy at law being adequate.

[Judgment in accordance with opinion.]

Burr v. Mutual Life Ins. Co. of New York (Ore. S. C.):

187 Pacific Reporter (March 29, 1920) 850.

Policy—Wife's Interest—Pledge:

The pledge by a wife of her interest in husband's policy of life insurance to secure his debt was valid.

Same—Assignment—Bankruptcy:

Where the lender to a husband held the husband's life policy as a pledge by virtue of an assignment executed by the beneficiary, wife, the lender's claim was superior to that of the wife's trustee in bankruptcy.

Same—Same—Pleading:

An answer in interpleader would not preclude claimant of insurance proceeds under an assignment of the policy as security from contending as to the character of the assignment.

[Judgment in accordance with opinion.]

Connecticut Mutual Life Ins. Co. v. Allen (Mass. S. C.):

126 Northeastern Reporter (March 30, 1920) 367.

Policy—"Engaged in Military Service"—Instruction:

A policy of life insurance making insurer liable for only the reserve of the policy upon the death of insurer while en-

gaged in military service, etc., without a permit, did not exempt insurer from liability where insured died of influenza in a base hospital in an army camp in the United States while a private in the United States army, such exemption clause covering only death proximately caused by war activities.

[Judgment in accordance with opinion.]

Nutt v. Security Life Ins. Co. of America (Ark. S. C.):

218 Southwestern Reporter (March 31, 1920) 675.

Policy—Loan—Lapse:

Loan agreement construed in preventing lapse of policy for non-payment of note.

Same—Payment of Premium—Waiver:

The statement of an officer of insurer in urging insured to reinstate his life policy which had lapsed for non-payment of premium that the company would accept his note for the amount of the premiums and, in the event he should be unable to pay the note when due, "the company will not enforce payment except from the proceeds of the policy", did not waive payment of the note but was an agreement only to the cash surrender value of the policy for payment of the note on insured's failure to pay the same.

Same—Non-Payment of Premium Note—Notice of Cancellation:

Under the provision that upon non-payment of premium note when due the policy should become null and void "without any action and notice by the company" demand of payment or notice of cancellation was unnecessary.

[Judgment for company below. Here affirmed in favor of company.]

Glover v. Kansas City Life Ins. Co. (Mo. C. A.):

218 Southwestern Reporter (April 7, 1920) 905.

Action on Policy—"Engaged in Military Service"—Instruction:

Where a life insurance policy exempted insurer from liability except for an amount equal to a net reserve on the policy "if the insured shall die or become disabled while engaged in naval or military service in time of war or in consequence of such service and insured enlisted in the army in the war with Germany and died of pneumonia in a hospital in the United States, it was *Held*, That deceased insured was engaged in the military service and died when in such service within the meaning of the policy.

Same—Policy—Validity of Exemption:

A provision in a policy of life insurance exempting insured from liability in case insured died while engaged in naval or military service is valid.

Military Hazards—Increased Premiums—Public Policy:

Provision in policy of life insurance excluding hazards incident to military service in time of war or exacting a higher rate of premium for such risks are not void as against public policy.

Same—Same—Waiver:

Where a policy of life insurance exempted insured except for net reserve if insured should die or become disabled while engaged in naval or military service in time of war during such service unless an increased rate was paid acceptance by insurer of premiums at the original rate did not waive the condition when insured concealed the fact that he had entered the army.

[Judgment for plaintiff below. Here reversed in favor of company.]

Reid v. American Nat. Assur. Co. (Mo. C. A.):

218 Southwestern Reporter (April 7, 1920) 957.

Action on Policy—Defense—Waiver:

If the insurance company at all times throughout negotiations denies liability and sends blanks to make proof of loss subject however to its plenary rights to make whatever defense it may have, then there is no waiver of any defense it may have.

[Judgment in accordance with opinion.]

Dodder v. Pacific Mut. Life Ins. Co. of Cal. (Neb. S. C.):

176 Northwestern Reporter (April 9, 1920) 730.

Action on Policy—Suicide—Evidence:

In an action on policy of life insurance where the defense suicide, witnesses, both expert and unexpert could give their opinion that insured did not understand the nature of his act, though that was a question for the jury to determine.

[Judgment for plaintiff below. Here affirmed against company.]

Fidelity Mut. Life Ins. Co. v. Cochran (Ky. C. A.):

219 Southwestern Reporter (April 14, 1920) 172.

Action on Policy—Payment of Premium—Extension of Time:

Where insured executed and returned to insurer a note given for a premium and thus consummated an extension of time for paying the premium, any attempt to engraft any further condition or provision upon it by a receipt sent him thereafter was without effect.

Payment of Premium—"Grace"—Statute:

Under Tex. Stat. an insurer cannot declare forfeiture of a life insurance policy until 30 days from default in payment of premium, even though policy has been executed without the statutory clause inserted therein.

Same—Same—Premium Note:

Under Tex. Stat. insured was entitled to 30 days grace after maturity of his premium note to pay the amount thereof, notwithstanding the note contained the words "without grace."

Contract—Grace—Ambiguity:

Uncertainty as to the period of grace in policy must be resolved against a forfeiture.

Action on Policy—Payment of Premium—Evidence:

In an action on policy of life insurance statement of insured while on his death bed as to his intention to pay his premium note was inadmissible in evidence under the rule of *res gestae*.

Non-Payment of Premium Note—Forfeiture—Waiver:

Where insurer made conditional offer to insured to extend his premium note, there was a waiver of forfeiture for non-payment of premium note.

Action on Policy—Premium Note—Interpretation:

A note given "in lieu of" an insurance premium was one given in place of the premium, and receipt which so stated tended strongly to show that insurer had accepted note as a payment and not as extension of time.

Same—Policy—"Term Insurance":

In a "Five Year Term Non-Renewable Policy," the provision for the payment of five annual premiums "the first payable in advance, and a like sum on each 28th day of February thereafter during the continuance of this policy until five full years' premiums have been paid, or until the prior death of the insured," was not a contract of "term insurance," under which an insured has only the right upon payment of an annual premium to insurance upon his life for the term paid for and the right to continue the insurance from year to year or from term to term at the same rate and default in payment of an annual premium would not *ipso facto* forfeit the policy.

Policy—Contract—Construction:

Where two interpretations of a policy of insurance equally fair are possible, that which permits the greater indemnity should prevail.

Same—Ambiguity—Same:

A contract of insurance if ambiguous must be construed against insurer and in favor of insured.

Same—Forfeiture Provision—Requirement:

The right of forfeiture must be expressly stated in the insurance contract in plain and unambiguous language and where the policy stipulates that it is issued in consideration of the payment of premiums in advance annually and that the policy and application constitute the entire contract which "shall be incontestable except for the payment of premiums" such language is not an express provision that upon default of payment of premium the policy is *ipso facto* forfeited.

Same—Same—Same:

Where the condition as to forfeiture for non-payment of premium note of maturity were contained only in the note mere failure to pay premium note will not avoid policy.

[Judgment for plaintiff below. Here affirmed against company.]

Southland Life Ins. Co. v. Hopkins (Tex. C. C. A.):

219 Southwestern Reporter (April 14, 1920) 254.

Action on Oral Contract—Consummation—Evidence Considered:

In an action on an alleged oral contract of life insurance, evidence considered and *Held* to sustain a finding that it was understood between the parties that the making of the contract of insurance would not be consummated until the policy should be issued, and that until then the insurance company could, as it did, refuse the application in accordance with the provision in the receipt given to the applicant.

[Judgment for company below. Here affirmed in favor of company.]

Magness v. Great Southern Life Ins. Co. (Tex. C. C. A.):
219 Southwestern Reporter (April 14, 1920) 280.

Insurance Proceeds—Interest of Trustee in Bankruptcy—Statute:

Under Mississippi Statute which exempts from debts of insured, the proceeds of a life policy to a certain amount whether payable to his estate or to others, and which as construed by the Supreme Court of Mississippi, includes as "proceeds" of a policy its surrender value, the trustee of a bankrupt in such state takes no interest in a policy held by him, under Mississippi bankruptcy act.

[Judgment in accordance with opinion.]

In re. Brinson (U. S. S. C.):

262 Federal Reporter (April 15, 1920) 707.

Policy—Facility of Payment—Right of Administrator:

The payment by insurance company to a person under the facility of payment clause of the policy, prior to the appointment of an administrator of insured's estate, would not change the original contract of life insurance, in which the insurance company agree to pay executor or administrator of insured and would not change beneficial interest in the fund.

[Judgment in accordance with opinion.]

Caveny v. Healey (N. J. S. C.):

109 Atlantic Reporter (April 15, 1920) 204.

Action on Policy—Suicide—Burden of Proof:

In an action on a policy of life insurance, the burden of proof as to the defense of suicide was on insurer.

Same—Cause of Death—Evidence:

In an action on a policy of life insurance, defended on the ground of suicide, where policy contained no provision that the certificate of attending physician and the finding of coronor should be admitted in evidence to establish the cause of death, such certificate and findings were inadmissible over objection if offered in evidence.

[Judgment for company below. Here reversed against company.]

Green v. Missouri State Life Ins Co. (Tex. C. C. A.):
219 Southwestern Reporter (April 21, 1920) 552.

Action on Policy—Legal Representative—Parties:

Where life policy required that the proceeds be paid to the beneficiary, if living, and if not living, to her legal representative, such legal representative of the beneficiary was a necessary party in an action on the policy.

[Judgment for plaintiff below. Here reversed in favor of company.]

Peoples Mut. Life Ins. Co. v. Fagan (Ark. S. C.):

219 Southwestern Reporter (April 23, 1920) 738.

Purchase of Stock—Fraud—Equity:

Where an insurance company induced through fraud to purchase stock of another insurance company and had destroyed the value of the stock by transferring the assets of the latter company to itself, equity on granting rescission will require the purchaser to pay the actual value of the stock at the time of its purchase.

Same—Agents—Misrepresentation:

Where the agents of an insurance company who purchased stock of another company have knowledge of facts affecting its value the purchaser cannot claim misrepresentation.

[Judgment in accordance with opinion.]

Shearer v. Farmers Life Ins. Co.;

Wible v. Same (U. S. C. C. A.):

262 Federal Reporter (April 29, 1920) 861.

Action on Policy—"Good Health"—Evidence:

Where on the day policy was delivered to insured, he had been suffering from severe pain for 12 days, one doctor diagnosed his case as appendicitis and another as stones in the kidneys and if such illness continued until his death from uremic poisoning two months later, it was *Held*, That insured was not in "good health" within the meaning of the policy on the day of delivery.

Same—Premium—Payment:

Where the agent of insurer agreed with insured that he would personally take insured's notes for first premium and remit from his own funds the amount of the policy, less his commission to the company, the premium was paid as far as the company was concerned on the date of the remittance by the agent.

Policy—Health—Waiver:

Notwithstanding an insurance policy provided that only a general officer could waive any condition, notice to the agent for soliciting and delivering the policy of insured's condition when the policy was delivered was notice to company and its acceptance of premium thereafter precluded it from attacking the policy.

[Judgment for company below. Here reversed against company.]

Chapman v. Mutual Life Ins. Co. of New York (La. S. C.):

83 Southern Reporter (May 1, 1920) 887.

Action on Policy—Conviction of Crime—Evidence:

In an action on a policy of life insurance, the fact that in a criminal proceeding the beneficiary named in the policy sued on had been convicted of voluntary manslaughter for the felonious killing of his wife who was the assured named in the policy did not prevent the jury from accepting his sworn testimony to the effect that such killing by him was accidental and unintentional.

[Judgment for plaintiff below. Here affirmed against company.]

Metropolitan Life Ins. Co. v. Hand et al. (Ga. C. A.):

102 Southeastern Reporter (May 1, 1920) 647.

Action on Policy—Insolvency—Evidence:

In an action on a policy of life insurance, involving the issue of whether insured's wife, to whom insured had given policy surrendered the policy and her rights thereunder for a cash consideration, testimony that the insured left no estate except his insurance policy was admissible, where it was claimed that insolvency of insured was one of the reasons inducing wife to surrender policy.

Policy—Surrender—Change of Beneficiary:

Where divorced wife of insured to whom insured had given a life insurance policy surrendered to him the policy and all her rights for a cash consideration, she could not subsequently complain that insured had changed policy making his estate the beneficiary in her place.

[Judgment in accordance with opinion.]

Hale v. Hale et al. (Ind. App.):

126 Northeastern Reporter (May 4, 1920) 692.

Policy—Previous Rejection—Waiver:

Where life policy provided that it should be void if insured had previously been rejected by the company, the issuance of such policy by the company waived the prior rejection, since insurer must be charged with knowledge of the facts shown by its own records.

Same—Same—Prior Existing Insurance:

Where the life policy provided that it should be void if when issued there was in force any policy on the life of insured previously issued by insurer, and there was a continuous receipt of premiums by insurer after the issuance of such policy, breach of the prior existing insurance provision was waived.

[Judgment for plaintiff below. Here affirmed against company.]

Atlas v. Metropolitan Life Ins. Co. (N. Y. S. C.):

181 New York Supplement (May 10, 1920) 363.

Agency Contract—Supplemental Agreements—Construction:

Where parties to an insurance agency contract entered into several supplemental agreements all of which referred to the original contract, and extended, limited, or modified

its terms, the original and supplemental contracts constitute a single contract and must be construed together.

Action for Damages—Loss of Profits—Evidence:

In an action by agent against company for damages, evidence of the percentage of renewals of old, established and financially sound insurance companies was not substantial evidence of the value of such future profits of defendant company, which had been unsuccessful for four years and was in a failing condition when it ceased insuring and transferred its business.

[Judgment in accordance with opinion.]

Chicago Life Ins. Co. v. Tiernan (U. S. C. C. A.):

263 Federal Reporter (May 13, 1920) 325.

Action on Policy—Change of Beneficiary—Recovery:

Insured had written on three different occasions to insurer stating that he desired to substitute his wife for his sister as beneficiary of his policy of life insurance, but though not indicating his change of mind, he neglected to send to insurer the proper blanks with the policy to have such change of beneficiary endorsed thereon as required by the policy, in order to make such substitution effective. Twelve days after insured's death, his widow sent the proper notice of change of beneficiary to insurer. In a suit by the widow on the policy it was *Held*, That the provision in the policy stating requirements for change of beneficiary, including notice of change of beneficiary and endorsement on policy was for the benefit of the company, that it was not insisted on, and that the widow could recover the insurance proceeds.

[Judgment in accordance with opinion.]

New England Mut. Life Ins. Co. v. Reid et al. (U. S. D. C.):

263 Federal Reporter (May 13, 1920) 451.

Policy—Change of Beneficiary—Undue Influence:

Designated beneficiary in a policy of life insurance authorizing insured to change the beneficiary cannot deprive him of such right nor take his change of beneficiary for undue influence on the part of the new beneficiary.

[Judgment in accordance with opinion.]

New York Life Ins. Co. v. Dunn et al. (Cal. D. C. A.):

188 Pacific Reporter (May 17, 1920) 1028.

Action on Policy—False Answer in Application—Burden of Proof:

Where the application for insurance had been lost, in an action on the policy the burden of showing the date of the application as affecting the truth of statements made therein was on insurer.

Same—Same—Question for Jury:

In an action on policy of insurance whether insured falsely

stated in her application that she had not been rejected by any other insurance company was a question for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

American Natl. Ins. Co. v. Mayo (Tex. C. C. A.):

220 Southwestern Reporter (May 19, 1920) 349.

Policy—Military Clause—Public Policy:

A provision in a policy of life insurance excepting military or naval service in the time of war from the risks assumed by the insurance is not invalid as contrary to public policy.

Same—Same—Construction:

Where the policy of life insurance excepts military service in time of war from the risks assumed by the insurer did not differentiate between voluntary and involuntary service such differentiation could not be read into the policy.

Same—Same—Ambiguity:

Where an insurance contract prepared by insurer is capable of two interpretations, that interpretation most favorable to insured must be given.

Action on Policy—"Military Service"—Interpretation:

One has entered "military service" when he has passed the examination, taken the oath, been enrolled as a soldier and become subject to the orders of the military branch of the government, though he is still in training and though the policy provides with respect to civilians that military service shall be construed to mean work in any capacity "in connection with actual warfare."

Same—Same—Notice:

The provision of a life insurance policy excluding from the risks assumed, military service in time of war without a written permit, was not inoperative on the ground that the time for giving notice of insured's entry into military service had not expired at the time of his death as the contract did not call for notice but for a written permit to be issued by the insurer.

Same—Waiver—Estoppel:

The doctrine of waiver or estoppel by putting plaintiff to expense of making out proofs of loss is not applicable to a defense based on a provision of a policy excepting military service in time of war from the risks assumed.

[Judgment for company below. Here affirmed in favor of company.]

Ruddock v. Detroit Life Ins. Co. (Mich. S. C.):

177 Northwestern Reporter (May 21, 1920) 242.

Policy—Collateral Pledge—Consent of Beneficiary:

Where insured reserves the right to change the beneficiary, such beneficiary has no vested right in the proceeds of the policy and insured may pledge the policy to the company for a loan without such beneficiary's consent.

[Judgment for plaintiff below. Here reversed in favor of company.]

Lamar Life Ins. Co. v. Moody (Miss. S. C.):

84 Southern Reporter (May 22, 1920) 135.

Premium Note—Extension—Lapse of Policy:

Where, before a life insurance premium becomes due, an agreement is made extending time of payment, a failure to meet the obligation at its new maturity does not cause a lapse of the policy as Kan. Stat. forbids a forfeiture on account of the non-payment of premium until 30-days notice thereof has been given after such default occurred.

[Judgment for plaintiff below. Here affirmed against company.]

Cunningham v. Globe Life Ins. Co. (Kan. S. C.):

189 Pacific Reporter (May 24, 1920) 158.

Action on Policy—Presumption of Death—Conclusiveness:

The presumption of death which arises after continuous absence for a period of seven years of one who left his home for a temporary purpose and from whom no tidings have been received is not a conclusive presumption which may not be rebutted by proof of facts and circumstances.

Same—Same—Jury:

When in an action on a life insurance policy, there is any evidence tending to rebut the presumption of death arising from seven years' absence it is for the jury to say whether such evidence is sufficient to rebut the presumption.

Same—Same—Evidence:

In an action on a policy the fact that insured at the time of his disappearance was guilty of the crime of forgery and may have been a fugitive from justice was properly admitted in evidence to rebut the presumption of death arising after seven years' absence, but the proof of such fact would not as a matter of law overcome the presumption of death.

Same—Same—Same:

Where in an action on a life insurance policy the presumption of insured's death from seven years' absence was invoked, evidence in addition to such absence that insured had been addicted to the use of intoxicating liquors and morphine and had contemplated suicide, was sufficient evidence to raise the presumption that he was dead.

Same—Same—Same:

Where in an action on a life insurance policy, a presumption of insured's death from seven years' absence was invoked, evidence that insured had been seen alive during such seven years, if believed, was sufficient evidence to rebut the presumption of death.

[Judgment for plaintiff below. Here affirmed against company.]

Equitable Life Assur. Soc. of U. S. v. James (Ind. App.):

127 Northeastern Reporter (May 25, 1920) 11.

Policy—Non-Payment of Premium—Forfeiture:

The provision in the policy of life insurance that if the premium or premium notes are not paid in accordance with

the terms of the policy the same shall be void is enforceable in the absence of statutory enactment to the contrary.

Action on Policy—Premiums Advanced—Statute:

Where a life insurance company accepted part cash and three premium interest bearing notes covering the first annual premium with an agreement that the policy shall be forfeited if each of such notes is not paid at maturity, such action does not violate Ind. Stat. providing that no policy of life insurance shall be issued or delivered unless it shall provide that all premiums shall be payable in advance.

Same—Policy—Estoppel:

A stipulation in a life insurance policy that the same was issued in consideration "of the payment in advance of \$30.90 ***** and the payment of a like sum on or before the seventh day of April, each year thereafter" would not estop insurer from showing that the payment of the full amount of the premium was not made at the time the policy was issued.

Non-Payment of Premium—Forfeiture—Estoppel:

An insurance company is estopped to insist upon a forfeiture for non-payment of premiums or premium notes if it leads the insured to believe that the payment of premiums or premium notes will be received after the same are due.

Same—Same—Same:

Where insurer accepted part of the first annual premium in cash and three notes payable in 3, 6, and 9 months under an agreement for forfeiting the policy in case of non-payment, evidence that the first note was paid 30 days after maturity, the second by check issued on the day it was due, and that the third was unpaid at insured's death, although it was due, did not constitute a course of dealing between insurer and insured which would amount to an implied agreement that there would be no forfeiture if the last premium note was not paid when due, so as to require insurer to accept payment after the death of insured.

[Judgment for plaintiff below. Here reversed in favor of company.]

New England Mutl. Life Ins. Co. of Boston, Mass. v. Brooks (Ind. App.):

127 Northeastern Reporter (May 25, 1920) 17.

Joint Life Policy—Survivor—Action:

The policy of life insurance on the life of two persons, the amount of the policy being payable on the death of either to the survivor, is enforceable only in accordance with its terms and where one of the insured murders the other, thus disqualifying himself from recovery, does not vest a right of action in the personal representative of the deceased.

Same—Contract—Obligation:

A policy on joint lives of two persons, the amount of the

policy being payable on the death of either to the survivor, imposes mutual obligations.

[Judgment for company.]

Spicer v New York Life Ins. Co. (U. S. D. C.):

263 Federal Reporter (May 27, 1920) 784.

Reinsurance—Advises—Liability:

Under reinsurance contract making reinsurer's liability commence simultaneously with that of insurer provided that upon insurer's failure to send reinsurance advises to reinsurer within ten days "after receipt***** of advice of the issuing of the policy or renewal receipt," such liability shall commence from the moment of the dispatch of reinsurance advises, reinsurer was liable notwithstanding insurer's failure to send reinsurance advises.

[Judgment in accordance with opinion.]

Pacific Mutl. Life Ins. Co. of Cal. v. Pacific Surety Co. (Cal. S. C.):

189 Pacific Reporter (May 31, 1920) 273.

Payment of Premiums—Divorced Wife—Vested Interest:

The mere voluntary payment of assessments by a wife after she has been divorced and no longer has any interest in the fund does not give a vested equitable interest or any right in the proceeds of the benefit certificate.

Life Policy—Beneficiary—Distribution:

Under a life insurance policy payable to the wife and children of the insured, the beneficiaries take equally.

[Judgment in accordance with opinion.]

Pike County Mutl. Life Assn. v. Berry (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (May, 1920) 13.

Action on Policy—Denial of Execution of Policy—Pleading:

An insurance company cannot deny the execution which includes delivery of the policy sued on, a copy of which is filed unless it verifies its plea by affidavit even though the plaintiff made no objection.

[Judgment in accordance with opinion.]

Logan v. The Mutual Life Ins. Co. of N. Y. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (May, 1920) 21.

Internal Revenue—Dividends—Computation of Income:

Under the internal revenue act imposing a tax on the income of insurance companies and providing that life insurance companies shall not include as income such portion of any actual premium received as shall have been paid back or credited to the policyholder or treated as an abatement of premiums within the year and that all insurance companies may deduct sums other than dividends paid within the year on policy and annuity contracts; cash dividends paid to policyholders and not used by them during the year in payment of premiums cannot be deducted.

Same—Same—Same:

Internal revenue act authorizing insurance companies to deduct from gross income sums other than dividends paid on policy and annuity contracts, is tantamount to a direction that dividends shall not be deducted.

[Judgment in accordance with opinion.]

Penn. Mutl. Life Ins. Co. v. Lederer (U. S. S. C.):

40 Supreme Court Reporter (June 1, 1920) 387.

Action on Policy—Collection of Premium—Authority:

Automobile insurer's director of agencies had nothing to do with the collection of notes by means of which time for payment of premiums were extended other than putting them into the bank where they were payable, yet where he could accept payment when the notes were payable at such bank and withdraw the notes he had authority to collect and such authority carried with it authority to collect through another bank.

Same—Payment of Premium—Evidence:

Where insured had money to his personal credit in a bank amounting to more than sufficient to discharge his indebtedness to insurer, his direction to the cashier of the bank to pay the premium note and charge his account with the amount was sufficient to show payment if cashier had authority to receive it.

Same—Same—Same:

When the language of contracts consisting of letters is clear and unambiguous they should be construed by the court but where letters written by an insurance company's representative to a bank of which a policyholder was president were ambiguous the question of whether they authorized the bank to collect a premium or not of such policyholder was for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

New York Life Ins. Co. v. Allen (Ark. S. C.):

220 Southwestern Reporter (June 9, 1920) 803.

Action on Policy—Premium Note—Forfeiture:

Where insurer accepted a note in lieu of cash premiums which was payable in installments, and continued insurance in force until midnight of the due date of the note, forfeiture of policy for non-payment of premium installments when due was avoided until the date of the last installment which was due date of the note.

Same—Same—Construction:

Ambiguous premium note prepared by insurer should be construed strictly against insurer.

Same—Policy—Forfeiture—Waiver:

Where insured sent a check for less than the amount due on his premium note at that time requesting that his insurance be reduced, and the company retained the check, with thanks, without forfeiting the policy for failure to pay

installments and did not return the check until after insured's death, it waived any right to forfeit policy for the default.

Same—Same—Same:

Insurer's claim that they returned insured's check and claimed forfeiture without knowledge of his death which occurred five days before, does not effect the rights of the parties which had become fixed by the death of insured.

"Waiver"—"Estoppel"—Interpretation:

The elements of "estoppel" are not essential to waiver of forfeiture of a life insurance policy, as distinguished by "waiver" of the defense of forfeiture, as waiver and estoppel are not synonymous.

[Judgment for plaintiffs below. Here affirmed against company.]

Roberts et al. v. American Natl. Assur. Co. (Kansas City C. A., Mo.):

220 Southwestern Reporter (June 9, 1920) 996.

Foreign Company—Service of Process—Statute:

Inasmuch as the Kansas statute provides that it is only in the county in which the plaintiff resides, or in which the cause of action arose that a suit against a foreign corporation may be begun in this state by the service of summons on the superintendent of insurance where neither of such conditions exists service made in that manner is ineffective.

Same—Same—Same:

A cause of action against a foreign corporation for breach of contract cannot be regarded as having arisen in a county of Kansas by virtue of the fact that a part of the services were to be performed therein.

[Judgment for plaintiff below. Here reversed in favor of company.]

Shearer v. Farmer's Life Ins. Co. (Kan. S. C.):

189 Pacific Reporter (June 14, 1920) 648.

Policy—Forfeiture—Waiver:

Where an insurer on maturity of premium note offered to extend time for payment of premium upon insured's making a new application and executing a new note, such offer, though not binding upon insurer until insured's acceptance, constituted waiver by insurer of the right to enforce forfeiture.

Same—Same—Same:

Where insurer on the day of insured's death treated the policy as being still in existence by sending insured a notice of the premium to become due, and where nothing appeared on the books of insurer prior to such time, suggesting that it had exercised its right of forfeiture for non-payment of past two premiums, it was *Held*, That such evidence is suffi-

cient to show that insurer had not seen fit to exercise the right of forfeiture for non-payment of premiums.

[Judgment in accordance with opinion.]

Roberts v. Wichita Southern Life Ins. Co. (Tex. Com. App.):

221 Southwestern Reporter (June 16, 1920) 268.

Action on Policy—Knowledge of Disease—Question for Jury:

In an action on policy of life insurance defended on the ground of fraudulent answer to the examining physician, the question whether applicant knew she had a tumor at the time she told the examining physician she did not, was for the determination of the jury.

Same—Fraud—Evidence:

In an action on a policy of life insurance, defendant on the ground of fraudulent answer to the examining physician, evidence that the beneficiary of another policy which had been issued on the same application had surrendered that policy on return of the premium was inadmissible.

Same—Same—Same:

In an action on a policy of life insurance defended on the ground of fraudulent answer to examining physician that insured did not have tumor, a question as to the opinion of the examining physician as to whether the risk would have been insurable had applicant answered affirmatively questions including numerous other diseases immaterial to the issues were improper.

Same—Same—Defense:

The mere finding that applicant misstated facts to the examining physician, which under Iowa Code removes the estoppel of the company to show poor health at the time of the examination is not in itself sufficient as a defense to the policy and an instruction requiring a finding that the company as well as the examiner relied on such false answer was proper.

Same—Same—Instruction:

An objection to an instruction requiring a finding that the insurer was defrauded by a false answer to a question of the examining physician, for the reason that insurer would not be defrauded until it paid the proceeds of the policy, is not tenable, fraud being perpetrated when the policy is procured.

[Judgment for plaintiff below. Here affirmed against company.]

Bohne v. North American Life Ins. Co. of Chicago. (Ia. S. C.):

177 Northwestern Reporter (June 18, 1920) 706.

Decedent's Estate—Insurance Proceeds—Payment:

Where a person receives payment of insurance proceeds under a facility of payment clause of life insurance policy the court cannot decree that title to such payment is in such payee merely for the reason that she has paid the premiums on the policy.

Same—Same—Same:

Payment of insurance proceeds under a facility of payment clause of a life insurance policy to a person deemed by insurer entitled to such proceeds, does not invest that person with the absolute ownership of the money paid.

[Judgment in accordance with opinion.]

In re. Reilly's Estate (N. Y. Surr. Ct., Bronx Co.):

182 New York Supplement (June 21, 1920) 221.

Policy—Suicide—Limitation of Recovery:

A provision in a policy of life insurance that in the event of suicide of insured, within two years from the date on which the insurance begins, the limit of recovery shall be the amount of premiums paid, is not prohibited by Ohio Statute, and is valid.

[Judgment for company below. Reversal by Court of Appeals. Here reversed in favor of company.]

Western & Southern Life Ins. Co. v. Horn (Ohio S. C.):

127 Northeastern Reporter (June 22, 1920) 416.

Policy—Non-Payment of Premium—Lapse:

Where the policy by its terms could be revived within 52 weeks after default in payment of premiums, it was not void because of non-payment of premiums but only lapsed.

Same—Lapse—Waiver:

The acceptance by insurer of over due premiums after insured's death of which insurer had no knowledge did not waive the lapse of the policy for delay in payment of premiums.

Same—Same—Same:

The acceptance by insurer of over due premiums, without requiring the proof of good health of insured to which it was entitled under the policy was sufficient evidence to submit to the jury the issue of waiver by insured of the lapse of the policy.

[Judgment for plaintiff below. Here affirmed against company.]

Wright v. Metropolitan Life Insurance Co. (St. Louis C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 383.

Annotation: Construction of Provision for Payment of Premiums by Insurer:

Under the above heading appears an annotation to the case of Federal Life Insurance Company v. Lewis; reported in 183 Pacific Reporter 975; 5 American Law Reports 1637.

Annotation: Incontestable Clause in Insurance Policy as Excluding Defense of Suicide:

Under the above heading appears an annotation to the case of Metropolitan Life Ins. Co. v. Peeler, reported in 176 Pacific Reporter 939; 6 American Law Reports 441.

Annotation: Validity as against Creditors of Change of Beneficiary of Insurance Policy from Estate to Individual:

Under the above heading appears an annotation to the case of *Navassa Guana Company v. Cockfield et al.*, heretofore reported in 30 Insurance Digest 223; 6 American Law Reports 1168.

Annotation: Date from Which Life Insurance Premium Periods are to be Computed:

Under the above heading appears an annotation to the cases of *Prudential Ins. Co. of America v. Stewart*, heretofore reported in 30 Insurance Digest 138; 6 American Law Reports 766; and *Wilkinson v. Commonwealth Life Ins. Co.* heretofore reported in 30 Insurance Digest 224; 6 American Law Reports 769.

Annotation: Dividends as Preventing Lapse of Policy for Non-Payment of Premiums:

Under the above heading appears an annotation to the case of *Cason v. Mutual Life Ins. Co. of New York*, reported in 184 Pacific Reporter 296; 6 American Law Reports 1395.

Annotation: Incontestable Clause as Excluding Defense Based upon Public Policy:

Under the above heading appears an annotation to the case of *Metropolitan Life Ins. Co. v. Peeler*, reported in 176 Pacific Reporter 939; 6 American Law Reports 441.

Annotation: Death as within Provision Exempting Insurer or Limiting Liability in Case of "injury" Intentionally Inflicted:

Under the above heading appears an annotation to the case of *Interstate Business Men's Acc. Assn. v. Dunn*, reported in 198 Southwestern Reporter 727; 6 American Law Reports 1333.

Annotation: Incontestable Clause in Insurance Policy as Excluding Defense that Insured Was Executed for Crime:

Under the above heading appears annotation to the case of *Metropolitan Life Ins. Co. v. Peeler*, reported in 176 Pacific Reporter 939; 6 American Law Reports 441.

Annotation: Incontestable Clause as Excluding Defense of Want of Insurable Interest:

Under the above heading appears an annotation to the case of *Metropolitan Life Insurance Company v. Peeler*, reported in 176 Pacific Reporter 939; 6 American Law Reports 441.

Forfeiture—Cancellation—Waiver:

Where there is no intention on the part of the insurer

to claim a forfeiture it establishes a waiver of its right to cancel the policy.

[Judgment for company below. Here reversed against company.]

Adams v. Columbian National Life Ins. Co. (Ill. App.):

13 Illinois Law Review, Appellate Court Digest (June, 1920) 40.

Policy—"Facility of Payment"—Discharge:

When an insurance company acting under the "facility of payment clause" in good faith pays the insurance to the divorced wife of insured, it cannot be compelled by creditors of deceased to pay again.

[Judgment for company.]

Bishop v. Prudential Co. of America (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (June, 1920) 82.

Policy—Surrender—Impeachment:

A written surrender of an insurance policy not under seal can be impeached in a court of law.

Surrender of Policy—Fraud—Estoppel:

Where one party has been guilty of intentional fraud misleading another, the party guilty of the fraud cannot escape the legal consequences of his conduct by saying the fraud might have been discovered by the party deceived through the exercise of reasonable care and diligence.

[Judgment in accordance with opinion.]

Gleason v. Northwestern Mutual Life Insurance Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (June, 1920) 89.

Annotation: Effect on Insurance Contract of Wagering Assignment Thereof:

Under the above heading appears an annotation to the case of *Finnie v. Walker*, reported in 257 Federal Reporter, 698; 5 American Law Reports 831.

Annotation: Disposition of Life Insurance Which by Terms of Policy Is Dependent upon Survivorship Where There Is No Presumption or Proof of Survivorship:

Under the above heading appears an annotation to the cases of *Watkins v. Home Life & Acci. Ins. Co.*, reported in 208 Southwestern Reporter 587; 5 American Law Reporter 791; and *McGowin v. Menken* reported in 1919 Northeastern 877; 5 American Law Reports 794.

Insurable Interest—Wife and Husband—Divorce:

A wife's insurable interest in her husband's life terminates upon a divorce being decreed, and she ceases to be a beneficiary under an insurance policy naming her as such.

[Judgment in accordance with opinion.]

Whiteselle v. Northwestern Mut. Life Ins. Co. (Tex. Com. App.):

221 Southwestern Reporter (June 23, 1920) 575.

Action on Policy—Forfeiture—Waiver:

As the law abhors forfeiture, it will seize upon the slightest circumstance to show that an insurance company has waived compliance with its policy provision requiring prompt payment of premiums and in such a case the company's conduct with respect to other premiums than those the non-payment of which is relied upon as constituting a forfeiture may be considered.

Same—Same—Same:

The waiver of a forfeiture need not be supported by consideration or based upon estoppel.

Same—Waiver—Jury:

In an action on a policy of life insurance evidence was held to go to the jury on the question of waiver of forfeiture for non-payment of premiums.

Policy—Premium—Payment:

The acknowledgement of receipt of first premium contained in a life insurance policy is conclusive and precludes the insurer from asserting invalidity of policy delivered on ground of non-payment, though this rule does not go so far as to prevent insurer from recovering the amount actually due for premiums.

[Judgment for company below. Here reversed against company.]

Dunken v. Aetna Life Ins. Co. (Tex. C. C. A.):

221 Southwestern Reporter (June 23, 1920) 691.

Policy—Military Service—Notice:

The clause in a life insurance policy requiring extra premium on military service required notice to insurer.

Same—Ambiguity—Construction:

Though any ambiguity in an insurance contract should be construed most strongly against insurer and most favorably to insured, the construction must be a reasonable and not a strained one.

[Judgment for company below. Here affirmed in favor of company.]

Mattox v. New England Mut. Life Ins. Co. (Ga. C. A.):

103 Southeastern Reporter (June 26, 1920) 180.

Policy—Good Health at Time of Delivery—Contract Construed:

Where a policy contains a provision that it shall not become effective unless the insured is alive and in sound health at the time of delivery and the company has had a medical examination prior to accepting the risk, the provision is to be construed as meaning that the applicant has not become ill between the time of making his application and the time of the issuance of the policy. It has no reference to diseases existing at the time of the application and medical examination.

Same—Same—Waiver:

The condition of the policy relating to good health at the time of delivery may be waived by the delivery of the policy and the acceptance of the premium by the company's agent with knowledge of insured's illness.

Same—Incontestable Clause—Fraud:

A clause providing that a policy shall be incontestable prevents the company from asserting the defense of fraud or misrepresentation unless they are expressly excepted.

Same—Same—Condition Precedent:

The incontestable clause prevents the company from asserting that the policy never had any validity because of the failure of some condition precedent.

Same—Same—Fraud:

A clause making a policy incontestable from date might be void, as against public policy if it could be held to exclude proof of fraud, but not so if it was to be incontestable after a stated time, not unreasonably short.

[Judgment for plaintiff below. Here affirmed against company.]

Chinery v. Metropolitan Life Ins. Co. (N. Y., App. Tr.):

182 New York Supplement (July 12, 1920) 555.

Policy—Premium—Payment out of Funds in Hands of Insurer:

Where the company, on the last day of grace for the payment of a quarterly premium had in its hands sufficient funds accruing under a different policy with which to pay said sum, it was obliged to so apply it to prevent forfeiture. If the insurer has funds in such a case in its hands to the credit of the insured, it is immaterial from what sources such funds were derived.

[Judgment for plaintiff below. Here affirmed against company.]

Reliance Life Ins. Co. v. Hardy (Ark. S. C.):

222 Southwestern Reporter (July 14, 1920) 12.

Policy—Premium—Agent's Agreement to Advance:

It was admitted that the applicant did not pay the first premium. The evidence was in conflict as to whether or not the agent had promised to advance such premium; there was no evidence to dispute the testimony for the defendant to the effect that no such advance by the agent had in fact been made. *Held*, That the court did not commit error in directing a verdict for the defendant.

[Judgment for company below. Here affirmed in favor of company.]

Thompson v. Metropolitan Life Ins. Co. (Ga. C. A.):

103 Southeastern Reporter (July 17, 1920) 424.

Policy—Assignment—Validity:

There being nothing to show that an assignment to one having no insurable interest was affected by any vicious

quality and such an assignment being valid in the state where it was made, it will be sustained notwithstanding the decision of the state of the Forum that an assignment must be founded upon a proper insurable interest.

Bill of Interpleader—Waiver of Defenses:

By filing a bill of interpleader and paying the fund into court the insurance company accepts as settled against itself all possible questions that might have arisen out of the policy as a mere matter of contract.

Policy—Assignment—Validity:

The validity of an assignment is governed by the laws of the state where it was executed and where the assignor resides.

[Judgment for assignee below. Here affirmed in favor of assignee.]

Haase et al. v. First Natl. Bank of Anniston (Ala. S. C.):
84 Southern Reporter (July 24, 1920) 761.

Policy—Agent's Construction—Estoppel:

From the necessity of the case insurance companies deal with the public through agents, and in such dealings it is reasonable to assume that such agents possess fuller and more complete knowledge as to the interpretation placed upon their contracts by the company than those not connected therewith.

Same—Same—Same:

Where a clause, attached to an insurance policy, is by any reasonable construction to any extent ambiguous, and the agent of the company soliciting the insurance represents to one applying for such insurance that the company construes such clause to have a certain meaning not inconsistent with the language used, and the party so solicited accepts such insurance, relying upon the interpretation placed upon the language by the agent being the one adopted by the company, the company will, after a loss has accrued under such policy, be estopped to deny that the clause does not mean what its agent represented it to mean.

[Judgment for association below. Here reversed against association.]

Edwards v. Masonic Mut. Life Assn. (W. Va. S. C. A.):
103 Southeastern (July 24, 1920) 454.

Action against Reinsurer for Recovery of Premiums—Sufficiency of Complaint:

In the complaint it was alleged that subsequent to the issuance of the policy involved by the original insurer, the said policy was transferred successively to several different companies and finally to the defendant company; that in the process of such transfers the value of said policy was substantially decreased by certain changes made; that such changes were concealed by the said companies including the defendant company. *Held*, That the paragraph of complaint stated a good cause of action as against general de-

murrer, based on the theory that the defendant company had fraudulently concealed the fact from the insured that the liability assumed by it under said policy was a limited liability and thereby induced him to pay to it the premiums provided therein.

Same—Evidence Considered:

The plaintiff based his right of recovery upon the theory that the liability assumed by the defendant company on account of his policy was less than the face thereof; that the defendant company knew such fact and knew that plaintiff was ignorant thereof and that with such knowledge fraudulently concealed the fact of such limited liability from him for the purpose of inducing him to pay to it the premiums provided in said policy. *Held*, That all these facts were essential to plaintiff's right of recovery and since the record fails to disclose any evidence to show that the defendant company knew that the insured was ignorant of the fact that the liability assumed by it was a limited liability and with such knowledge fraudulently concealed such fact from him, the plaintiff was not entitled to judgment.

[Judgment for plaintiff below. Here reversed in favor of company.]

Western Life Indemnity Co. v. Lindsay (Ind. App.):

127 Northeastern Reporter (July 27, 1920) 841.

Action on Policy—Non-Payment of Premium—Waiver—Evidence:

After insured's death one of plaintiff's counsel, over the telephone, called the secretary of the company and, without telling him of insured's death, asked what was the condition of the policy; after asking for a moment in which to look at the books, the secretary reported that the policy was in force. *Held*, That while this would not, of itself, constitute a waiver, since the insured was then dead, it was a circumstance for the jury to consider in passing upon the question whether the company had theretofore waived default in payment of certain notes.

Same—Non-Payment of Premium Note—Forfeiture:

Where the contract provides for forfeiture for failure to pay any premium note when due, then such default renders the policy void.

Same—Same—Same:

Where a note has been given to an agent on account of the premium on a policy and has been treated as the agent's property and the company has looked to the agent as its debtor for the credit extended to the insured by taking the note, then the failure of the insured to pay the note to the agent cannot be relied upon by the company to defeat recovery.

Action on Policy—Ownership of Note—Evidence:

Defendant sought to show that although the notes in question were made payable to the agent, yet he immediately

endorsed them to the company and in reality took them as agent of the company. *Held*, That in view of the provision that any note taken whether to the agent or to the company should be deposited with the latter, and, if the insurance was accepted, to be applied on the premium, the evidence as to whose property the note was should have been admitted.

Same—Waiver—Question for Jury:

Testimony to the effect that after default in payment of the premium note the company notified the insured of the ensuing premium and after the death of insured stated that the policy was in force, warranted the submission to the jury of the question of whether or not the company had waived forfeiture on account of non-payment of the premium note.

[Judgment for plaintiff below. Here reversed in favor of company.]

O'Donnell v. Kansas City Life Ins. Co. (Kansas City C. A.):

222 Southwestern Reporter (July 28, 1920) 920.

Corporation—Stock Subscription—"Property Actually Received".

The note of a subscriber to the capital stock of an insurance company, secured by mortgage upon real estate owned by the subscriber, is "property actually received" by the corporation within the meaning of Sec. 6 of Art. 12 of the Tex. Const.

[Judgment against company below. Affirmed on appeal to the Court of Appeals. Here reversed in favor of company.]

Prudential Life Insurance Co. of Texas v. Pearson; General Bonding & Casualty Insurance Company et al. v. Mosley et al. (Tex. S. C.):

222 Southwestern Reporter (July 28, 1920) 961, 967.

Action on Policy—Military Permit—Authority of Agent:

The agent testified that "I represent them as general agent, local territory." When the company first decided to issue permits for overseas military service, it failed to supply the agent with the blank forms for permits, because it did not then have any; later it did send to him such blank forms. The agent further testified that when insured's brothers came to him and submitted application for a permit to go overseas, he told them that it was all right and that he would attend to the matter. *Held*, That under this record, the court was justified in finding that the agent possessed at least apparent authority to receive applications for such permits and to accept the same.

Same—Same—Payment of Premiums:

The agent agreed with the insured and his brothers to take care of the premiums on the policy and to pay them to the company and charge the brothers with them on the books of the mercantile company, with which he was connected. *Held*, That both the insured and his brothers were

justified in believing that the agent would pay the second premium when it fell due and would also pay the additional premiums under the war risk. They had made arrangements for the money with the mercantile firm and as general agent of the company such agent had authority to receive the money and send it in. The money was there under his control all the time. Therefore the court was justified in finding that the insured had done all that was necessary for him to do in regard to the payment of the premiums.

[Judgment for plaintiff below. Here affirmed against company.]

Security Life Ins. Co. of America v. Bates. (Ark. S. C.):
222 Southwestern Reporter (July 28, 1920) 740.

Policy—Assignment—Rights of Beneficiary:

There is no such privity as between the beneficiary and the company as will warrant the company in asserting her rights as against the claims made by an assignee of the policy.

Same—Same—Same:

The insured having the right under the terms of the policy to change the beneficiary could assign the policy at will.

Same—Same—Limitation of Action:

The right to plead the statute of limitations is personal to the debtor and could not be asserted by the insurance company as against the bank to whom the policy had been assigned.

Same—Same—Same:

Since this action is by the assignee of the policy to recover on the policy, rather than an action on the debt, the limitation of time to sue did not begin to run until the policy matured.

Same—Same—Insurable Interest:

Assignment of a policy is not void on the ground of want of insurable interest; it is at least valid to the extent to which it becomes security for existing indebtedness and for advances made by the assignee. The balance, if any, belongs to the purchaser. As to the assignee, the company could not make the defense of want of insurable interest; its remedy in case of fear of demands by the beneficiary or others was to file a bill of interpleader.

Same—Loan Note—Concealment—Pleadings:

The original policy was surrendered and a new policy taken up. A loan note was taken on account of the new policy. It was alleged in reply that this loan note was never executed by the insured and that his signature thereto was obtained if at all "by fraud and misrepresentation" and that the insured did not know or intend to sign any such paper. *Held*, That these averments, after verdict were sufficient to support an instruction of fraudulent concealment.

Same—Same—Fraud—Evidence Considered:

It was contended that the loan note set up by the company was obtained by fraud. The insured testified that he did not sign the note and that the subject of the loan was never mentioned to him. The agent who negotiated the change of policies was not produced; neither was the loan note at the time the insured's deposition was taken. *Held*, That under this evidence the jury was warranted in finding that the loan note was never in fact signed by the insured, or if signed by him, that his signature was fraudulently obtained.

Same—Attorneys Fees:

The contract being one made in the State of Texas and no statute of that state authorizing the allowance of attorney's fees being pleaded, no attorney's fees could be allowed.

[Judgment for plaintiff below. Here affirmed against insurance company upon remittitur of amount of attorneys fees.]

First National Bank of Beeville, Tex. v. Security Mutual Life Ins. Co. of Binghamton, N. Y. (Mo. S. C.):

222 Southwestern Reporter (July 28, 1920) 832.

Policy—Beneficiary—Vested Interest:

The policy of insurance taken out by husband for the benefit of his wife vests an interest in her of which she cannot be divested without her consent.

Same—Assignment—Payment of Debt:

Where a policy has been assigned as collateral security, and the debt is paid and the policy returned prior to any breach of the contract, the title to the policy again vests in the assignor and such reversioning may take place by operation of law without any reassignment in writing.

Same—Same—Parol Evidence:

Assignments, absolutely on their face, may be shown by parol evidence to have been given simply as security.

Same—Same—Redemption:

An assignor of a policy given as collateral security, although the assignment is absolute in form, may maintain an action in equity to redeem upon paying the sums lawfully advanced.

[Judgment for beneficiary.]

Howard v. John Hancock Mutual Life Ins. Co. et al. (N. Y., Sp. Tr., Kings Co.):

111 New York Miscellaneous Reports 442.

183 New York Supplement (August 16, 1920) 80.

Policy—Insurable Interest—Evidence Considered:

The evidence showed that the plaintiff paid premiums on the policy in controversy and that she was the cousin of the person insured and that she was not dependent upon the insured. *Held*, That the policy was void for want of insurable interest.

[Judgment for plaintiff below. Here reversed in favor of company.]

Southern Mutual Life Ins. Co. v. Perry (Ark. S. C.):

222 Southwestern Reporter (August 18, 1920) 1067.

Policy—Completion of Contract—Delivery:

Delivery of the policy to the applicant's wife, in pursuance of his instructions so to do, was a sufficient delivery to make the contract effective. The test of an actual delivery to the insured is not whether it was deposited with the insured but whether it passed intentionally out of the control or dominion of the company into the control or dominion of insured.

[Judgment for plaintiff below. Here affirmed against company.]

Home Life & Accident Co. v. Compton (Ark. S. C.):

222 Southwestern Reporter (August 18, 1920) 1063.

Action on Policy—Terms of Settlement—Parol Evidence:

Where the policy, with the endorsements thereon, did not fully express the arrangements made by the parties when the contract was negotiated with reference as to whether or not the benefit should be paid in a lump sum or in installments, the correspondence between the company and the insured was admissible for such purpose.

Same—Same—Evidence Considered:

The policy originally had an endorsement put on it at insured's request, whereby the proceeds were to be paid in installments to the designated beneficiary. Desiring to obtain a loan the beneficiary was changed to the insured's estate. On repayment of the loan the name of the original beneficiary was reinstated and the policy returned. *Held*, That the insured's retention of the policy with the written endorsement as to the manner of payment without objection or protest was evidence tending to show that he acquiesced in the terms of the contract as they appeared in the policy.

[Judgment for company below. Here affirmed in favor of company.]

Montague v. Northwestern Mutual Life Ins. Co. (Wis. S. C.):

178 Northwestern Reporter (August 20, 1920) 455.

Agent's Contract—Commission—Evidence Considered:

The state agent of the defendant company for the state of Virginia was not entitled to commission on the conversion of a policy which was originally issued in another state.

Same—Same—Estoppel:

When the subject of the right to commission on the conversion of a term policy first came up, the plaintiff's agent, the state agent for Virginia, was advised that the company would not allow such commission until proper authority had been secured from the New York general agency, which wrote the term policy. *Held*, That in view of this advice the company was not estopped from invoking the provision of the agency contract limiting the plaintiff's operation to the state of Virginia.

[Judgment for company below. Here affirmed in favor of company.]

Carry v. Northwestern Mutual Life Ins. Co. (Va. S. C. A.):

103 Southeastern Reporter (August 21, 1920) 580.

Beneficiary—Change of Designation—Equity:

Insured made written application for a change of beneficiary as provided by the policy but was unable to deliver the policy to the company for endorsement of the change as required because of the refusal of the original beneficiary to surrender it for that purpose. *Held*, That while a beneficiary has a vested interest from the time of the delivery of a policy which interest cannot be divested except upon the terms specified in the policy, where those terms cannot be complied with because of the wrong of such original beneficiary, the new beneficiary is in equity entitled to the fund.

[Judgment for new beneficiary below. Here affirmed against original beneficiary.]

Taff v. Smith (S. C. S. C.):

103 Southeastern Reporter (August 21, 1920) 551.

Premium Note—Non-Payment—Rights of Beneficiary:

A note given to obtain an extension of time for payment of part of a premium provided "that the failure to pay this note when due shall, without notice to any party or parties thereon, render said policy ipso facto null and void." The policy itself made no provision for forfeiture in such case. *Held*, That the insured and the company could not impair the rights of the beneficiary by a subsequent contract such as the note, to which she was not a party.

[Judgment for plaintiff below. Here affirmed against company.]

Brown v. Life Ins. Co. of Virginia (S. C. S. C.):

103 Southeastern Reporter (August 21, 1920) 555.

Premium—Non-Payment—Insanity:

When a life insurance policy provides for a forfeiture of the insurance in case of a failure to pay premium, the policy in case of failure to pay is forfeited, and sickness or insanity will not avoid the forfeiture.

[Judgment for plaintiff below. Here reversed in favor of the company.]

New York Life Ins. Co. v. Alexander (Miss. S. C.):

83 Southern Reporter (August 21, 1920) 93.

Policy—Premium—Forfeiture:

Time is of the essence of all insurance contracts; and even though the condition of the policy relating to payment of premiums be construed as a condition subsequent, failure to pay when due forfeits the contract. And when the annual premium is payable in installments, the failure to pay any such installments works forfeiture.

Same—Same—Same—Waiver:

The insured failed to pay an installment of the premium when due. Subsequently he sent his check to the company after having received a letter from the company advising that his policy had lapsed. On receipt of the check the company wrote him that in order to restore the policy, it would

be necessary to furnish the company with a satisfactory certificate of health; later a further letter was written advising that the policy had lapsed and that the proceeds of his check had been placed in a suspension fund pending the receipt of a certificate of good health and that if the same were not furnished by a certain time, the payment would be refunded. *Held*, That the letters written by the company clearly negatived a waiver of the forfeiture.

[Judgment for company below. Here affirmed in favor of company.]

Nelson v. Mutual Life Ins. Co. (Mont. S. C.):

190 Pacific Reporter (August 23, 1920) 927.

Suit to Enforce Equitable Assignment—Parties—Service of Process:

The policy was payable to the insured's sister. It provided for a change of beneficiary. After the issuance of the policy, the insured made a contract with the plaintiff, by which, in consideration of marriage, he promised to assign the policy to her and to take the necessary steps to effectuate such assignment. The policy was delivered to plaintiff who thereafter paid the premium. Upon the death of insured the company refused to pay the proceeds to plaintiff whereupon suit was commenced in which the original beneficiary was named as a party defendant. Service was by publication. *Held*, That the action effected the title to personal property within the state and it was proper to make service by publication under Section 438 New York Code of Civil Procedure.

Policy—Assignment—Evidence Considered:

Under the facts stated in the foregoing paragraph the plaintiff procured an enforceable equitable interest in the policy notwithstanding the assured's failure to comply with the requirements of the policy relating to assignments.

Suit to Enforce Equitable Assignment—Service of Publication—Judgment:

The court having jurisdiction of the res, the judgment was conclusive as against the non-resident beneficiary who was brought into the case by service of process.

[Judgment dismissing complaint below. Here reversed against defendants.]

Schoenholz v. New York Life Ins. Co. et al. (N. Y., App. Div.):

183 New York Supplement (August 23, 1920) 251.

Action on Policy—Misrepresentation—Burden of Proof:

When it is sought to defeat recovery on a policy of life insurance on the ground of concealment of material facts by the insured, it is incumbent on the insurer to prove that the representations were made knowingly and with a fraudulent intent to mislead and deceive, and that they were material to the risk and were relied on by the insurer.

Same—Same—Question for Jury:

When the question of concealment of material facts is sought to be interposed to avoid liability on a life insurance

policy, such question of concealment is one of fact for submission to the jury.

[Judgment for plaintiff below. Here affirmed against assn.]

Fox v. Scandinavian Mut. Aid Assn. of Nebraska (Neb. S. C.):

178 Northwestern Reporter (August 27, 1920) 614.

Action on Policy—Premium—Question for Jury:

The plaintiff testified that the first premium was paid in her presence. The agent denied the payment, claiming that the policy was left with plaintiff for the purposes of examination and that it was understood that he should call at the place where insured worked on the following day for the premium. He called at such place at the time stated and insured was not there. He called again in a few days and was told that the insured was dead. *Held*, That whether or not the premium was paid was for the jury under this evidence.

[Judgment for plaintiff below. Here affirmed against company.]

Drena v. Travelers Ins. Co. (N. Y., App. Div.):

183 New York Supplement (August 30, 1920) 439.

Policy—Beneficiary—Distribution:

A policy taken out by a wife on the life of her husband provided for the payment of the proceeds to her if living at the time of her husband's death, and, if not living, then to her children or their guardian.

Policy—Assignment—Distribution:

The wife died before the husband, leaving three children. *Held*, That upon the death of the beneficiary, each child became vested with a one-third interest in the policy upon the father's life and that upon the subsequent death of one of said children intestate her third interest passed to her father as her only next of kin. It appeared that the insured for a good and sufficient consideration at the time paid, assigned his interest in the policy to his son. *Held*, That under such evidence the insured's second wife, upon his death was entitled to nothing under the policy.

[Judgment for plaintiffs below. Here affirmed in favor of plaintiffs.]

Belden et al. v. Belden (N. Y., App. Div.):

183 New York Supplement (August 30, 1920) 350.

Premium Note—Non-Payment—Forfeiture:

Even though provision is made in a note executed by the insured or in a receipt for such note given for a premium, that the note receipt and contract of insurance shall be void if the note is not paid at maturity, if the policy contains no such provision, there can be no forfeiture.

Same—Same—Same:

The policy provided "except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable. *Held*, That this provision

had reference only to the preceding provision under which the insured was invested with the right to change from the system of annual payments to either semi-annual or quarterly payments. It did not have the effect of stipulating a forfeiture for failure to pay premium note.

Same—Same—Same:

Where the company accepted notes on account of a premium due it was a waiver of forfeiture for failure to pay such premium and the fact that the note was not paid at maturity was immaterial, the policy containing no provision for forfeiture in such case.

[Judgment for plaintiff below. Here affirmed against company.]

Manhattan Life Ins. Co. v. Parker (Ala. S. C.):

85 Southern Reporter (September 4, 1920) 298.

Action on Policy—Health—False Statements:

Where insured did not deny having read application before signing, he will be deemed to have made the statements therein where the application expressly stated that no information with which insurer should be made acquainted had been withheld, that statements therein by insured constituted the basis of the policy, that they were true and were offered to insurer as a consideration for the contract.

Same—Same—Same:

If insured at time of making application has knowledge of or good reason to know that he is afflicted with a disease that renders his condition serious, his statements to the contract, in reply to specific inquiry, constitute a fraud upon the insurer which avoids the policy.

Same—Directed Verdict—Evidence:

In an action on a life insurance policy where it was conclusively established that insured was suffering from the disease from which he died at the time he made application for the insurance, contrary to his representations in his application that he was in good health, the court's refusal to direct verdict for insurer on the ground that false statements avoided the policy was reversible error.

[Judgment for plaintiff below. Here reversed in favor of company.]

Chadwick v. Beneficial Life Ins. Co. (Utah S. C.):

191 Pacific Reporter (September 6, 1920) 240.

Policy—Payment—Conclusiveness:

A payment by insurer to the daughter of the deceased under the terms of the policy barred insurer from further liability under the policies at the suit of the executor of the deceased.

[Judgment for company below. Here affirmed in favor of company.]

Lingerland v. Prudential Insurance Co. of America (N. J. C. of Err. App.):

110 Atlantic Reporter (September 9, 1920) 913.

Policy—Beneficiary—Vested Interest:

Where the right to change beneficiary was reserved in policy, beneficiary named did not take a vested interest but acquired only an expectancy subject to insured's right to change without beneficiary's consent, including that of surrender and cancellation of policy for cash payment from company, which released company from liability to the beneficiary though insured died before the check was received and cashed.

[Judgment for plaintiff below. Here reversed in favor of Company.]

Bost v. Volunteer State Life Ins. Co. (S. C. S. C.):

103 Southeastern Reporter (September 11, 1920) 771.

Policy—Payment of Premium—Agreement of Agent:

An agreement to deed lots to agent in payment of insurance premium not specified in the insurance policy was illegal.

[Judgment in accordance with opinion.]

Pryor v. Gowan (Ala. S. C.):

85 Southern Reporter (September 11, 1920) 370.

Policy—Reformation—Evidence Considered:

The reformation of an insurance policy will not be decreed after the expiration of the 15 year deferred dividend period where it appears that three years after the issuance of the policy the beneficiary acting for insured had the policy examined by an attorney, obtained a loan on the policy from the company, and the evidence relating to the alleged mistake or fraud is conflicting, uncertain and unconvincing.

[Complaint to reform dismissed.]

Ratt v. Security Mut. Life Ins. Co. (N. Y. S. C., Eq. Tr., Monroe Co.):

183 New York Supplement (September 13, 1920) 674.

Compensation for Services—Contract—Recovery:

Petition of plaintiff employe of company examined and held to be sufficient to warrant the recovery of the services rendered by him to the company under a written contract which was pleaded, and that the allegations were sufficient to admit of evidence that the parties treated the contract as a continuing one and justified a recovery for services rendered beyond the terms specified in the written contract.

[Judgment for plaintiff below. Here affirmed against company.]

Royce v. Farmers Life Ins. Co. (Kan. S. C.):

191 Pacific Reporter (September 20, 1920) 581.

Action on Policy—Military Clause—Recovery:

Exemption in life insurance policy from liability for death of insured while engaged in military service is applicable, though death was from pneumonia.

Same—Same—Same:

Inquiry as to whether, within a policy of life insurance, exemption from liability for death of insured while engaged

in military service in time of war, was ended by the Armistice is precluded by the stipulation that insured remained engaged in military service in time of war until his death.

[Judgment for company below. Here affirmed in favor of company.]

Slaughter v. Protective League Life Ins. Co. (Springfield C. A., Mo.):

223 Southwestern Reporter (September 22, 1920) 819.

Insurance Proceeds—Funeral Expenses—Beneficiary:

Where the proceeds of a life insurance policy were paid to the mother of a decedent and by her paid out for funeral expenses, she is not entitled to be reimbursed from the estate where she was not shown to have been named as beneficiary in the policy.

[Judgment in accordance with opinion.]

Estate of Clarence G. Smith (Orphans' Court, Lancaster County, Pa.):

37 Lancaster Law Review (September 24, 1920) 260.

Action on Policy—Proof of Death—Burden of Proof:

Where the defendant insurer denied plaintiff's allegations that proofs of death were furnished to company the burden was upon plaintiff to establish such allegations.

Same—Same—Evidence:

Testimony tending to prove waiver by insurer of compliance with the requirements as to furnishing proofs of death was not admissible to show that proofs of death had in fact been furnished.

Same—Same—Waiver:

Where the insurer not only denied plaintiff's allegation of furnishing proofs of death but also pleaded an affirmative defense that plaintiff failed to furnish proofs of death as required by policy, the plaintiff met such defense by showing insurer's waiver of such requirement.

[Judgment for plaintiff below. Here reversed in favor of company.]

Volunteer State Life Insurance Co. v. McGinnis (Ga. C. A.):

103 Southeastern Reporter (September 25, 1920) 824.

Action on Policy—Premium—Payment:

In an action on an insurance policy which had lapsed for non-payment of premium prior to the death of insured, evidence was considered and held insufficient to establish payment of the delinquent premium.

Same—Reinstatement—Waiver:

In action on policy which had lapsed for non-payment of premium, prior to insured's death, evidence considered and held insufficient to establish a waiver of the conditions of the policy regarding reinstatement.

[Judgment for plaintiff below. Here reversed in favor of company.]

Wehsner v. Kansas City Life Ins. Co. (N. D. S. C.):

178 Northwestern Reporter (October 8, 1920) 970.

Action on Policy—Premium—Authority of Agent:

In an action on policy, evidence merely that insured at the time of paying a personal note to insurer's agent, who paid a former premium, gave him money which was to pay future premiums, was not sufficient to show that such agent was authorized to receive the same so as to bind insurer.

[Judgment for plaintiff below. Here reversed in favor of company.]

Parrott v. Guaranty Fund Life Assn. (Springfield C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 77.

Policy—Loan—Husband and Wife:

Insured was held owner of life policy for purpose of obtaining a loan thereon, though his wife was named beneficiary.

Policy—Dividends—Application on Loan:

Where the owner of a life policy having made no election as to disposition of dividends, within the meaning of the policy, they were to be considered applied to purchase of paid up additions and the company could not apply them to the reduction of a loan on the policy.

[Judgment in accordance with opinion.]

Hilton v. New York Life Ins. Co. (S. C., Erie Co., N. Y.):

184 New York Supplement (October 13, 1920) 2.

Action on Policy—War Clause—Death on Lusitania:

Where a life insurance policy expressly provided that it did not cover death resulting directly or indirectly, or wholly or partly from war, the insurer was not liable for the drowning of insured, a passenger on the British steamship Lusitania, which was sunk by torpedoes by a submarine of the Imperial German Government.

[Judgment for company.]

Vanderbilt v. Travelers Ins Co. (N. Y. S. C., N. Y. Co.):

184 New York Supplement (October 13, 1920) 54.

Husband and Wife—Predeceased Husband—Insurance Proceeds:

The proceeds of an insurance policy on the life of a husband, in favor of his wife, which was paid to the wife's executor after her death, shortly following the death of her husband, becomes a part of her estate and descends to her two sons by a former husband who were her next of kin.

[Judgment in accordance with opinion.]

Stenneck v. Kolb (N. J. Ch.):

111 Atlantic Reporter (October 21, 1920) 277.

Policy—Change of Beneficiary—Assent of Insurer:

The beneficiary of a life policy, providing against any term or condition being varied except by written agreement of the president or secretary of the company, cannot be changed by mere notice to change.

Same—Assignment—Waiver:

The conditions in a policy of life insurance that it shall be void if assigned, is waived by insurer where, though refusing to pay the assignee, it pays the insurance to insured's administrator.

Same—Same—Statute:

California statute providing that life insurance policies may pass by transfer, impresses a rule of public policy on such class of contract so that an assignment is valid, notwithstanding a provision in the policy that it shall be void if assigned.

[Judgment in accordance with opinion.]

Lewis v. Reed (Cal. D. C. A.):

192 Pacific Reporter (October 25, 1920) 335.

Insurance Proceeds—Decedent's Estate—Public Policy:

Payment of insurance proceeds to the estate of insured upon death from injury inflicted by the named beneficiary is not contrary to public policy.

Same—Same—Beneficiary:

In the absence of a contract exemption proceeds under an insurance policy are payable to insured's estate where no beneficiary is named in the policy, although insured met his death through assassination.

Same—Murder—Recovery by Beneficiary:

The beneficiary who murders the insured cannot collect the insurance.

Beneficiary—Disability Exemption—Death:

Where the terms of a life insurance policy differentiated between death and specific disability the provision that the policy did not cover "disability resulting from intentional injury of the insured inflicted by himself or any other person whether fatal or non-fatal" did not exempt insurer from payment of death loss.

Policy—Statute—Application:

Iowa statute prohibiting beneficiary of "policy of insurance or certificate of membership issued by any benevolent association or organization" who kills or injures insured from recovery on policy or certificate and providing that benefits shall accrue to insured's heirs other than the beneficiary, is applicable only to benevolent associations and not to commercial enterprises.

[Judgment for company below. Here affirmed in favor of company.]

Kascountas v. Federal Life Ins. Co. (Ia. S. C.):

179 Northwestern Reporter (October 29, 1920) 133.

Policy—Misrepresentations—Forfeiture:

False representations by insured in his application that one of his parents had died of measles when in fact such parent died of pulmonary tuberculosis, avoids policy.

Same—Same—Same:

False representation in application as to having consulted physicians may avoid policy.

Same—Same—Concealment:

The policy of life insurance may be avoided where insured did not disclose in his application that a sister had died of tuberculosis.

Action on Policy—"Good Health"—Insane Person:

An insane person cannot be said to be in "good health."

[Judgment for plaintiff below. Here reversed in favor of company.]

Harris v. New York Life Ins. Co. (W. Va. S. C. A.):

104 Southeastern Reporter (October 30, 1920) 121.



FRATERNAL AND ASSESSMENT INSURANCE

Fraternal Insurance—Action by Nephews—Dependency—Burden of Proof:

In an action by the nephews by marriage of a deceased member of the fraternal order, the burden of proof was upon them to show their dependency upon the deceased member to make them proper beneficiaries under the by-laws of the order.

Same—Same—Same—Evidence:

In an action against a fraternal order by nephews by marriage of deceased member, where in proving their dependency there was no evidence that the assured member furnished a home, board, clothing, or medical service to the nephews, and no evidence of support or maintenance in a material degree, there could be no recovery.

[Judgment in accordance with opinion.]

Whiteman v. Heinzman et al. (Ind. App.):

124 Northeastern Reporter (November 4, 1919) 405.

Action on Benefit Certificate—Pleading:

Certain paragraphs of answer relating to forfeiture of membership and benefits therein were held sufficient against a motion to make more definite.

Beneficial Insurance—Forfeiture—Affirmative Action:

Where the laws governing a society are in such terms as to render themselves executing, the society need not take affirmative action against a delinquent in order to declare a forfeiture, but the right to benefits is lost immediately upon the default which by the rules constitutes the rights of forfeiture.

Same—"Family"—"Those Left Behind":

The provision of society's constitution that upon suicide of member the "family" and "those left behind" are deprived of the rights to the death benefits includes the members.

Appeal and Error—Instructions—Review:

Where the evidence is not in the record none of the instructions given will be held warrantless, if correct under evidence admissible under the issues.

[Judgment in accordance with opinion.]

Oleske v. Plotrowski et al. (Ind. App.):

124 Northeastern Reporter (November 4, 1919) 399.

Action on Policy—Default in Payment of Dues—Burden of Proof:

In an action for death benefits where plaintiff alleges fulfillment by the insured of all the conditions of the contract,

if any breach of any particular condition such as default in payment of dues is relied upon by the insurer, the burden of proof is upon the insurer.

Possession of Certificate—Payment of Dues—Presumption:

Where the plaintiff holds a certificate promising to pay a certain sum to her on the death of her husband, there is a presumption that the husband had paid dues essential to the original validity of the certificate.

Fraternal Insurance—By-Laws—Evidence:

The constitution and by-laws of a beneficial society can not be proved by a member and officer of such society.

[Judgment in accordance with opinion.]

Tkatch v. Knights and Ladies Security (Pa. S. C.):

107 Atlantic Reporter (November 13, 1919) 890.

Beneficial Insurance—Payment of Dues—Delay—Acceptance:

Where the rules of a beneficial society required payment of dues on certain dates and the insured failed to pay at that time, but paid a few days later, as had been his custom, and died next day, his beneficiary was not entitled to the benefits. The treasurer of the society was bound to receive the payments when made, whether they were made in time or not. The local officers could have no power to dispense with the rules of the society.

[Judgment in accordance with opinion.]

Southside Trust Company, Admr. v. Long et al. (C. P., Allegheny Co., Pa.):

67 Pittsburgh Legal Journal (November 15, 1919) 702.

Fraternal Insurance—Proof of Death—Release—Waiver:

Where, upon proof of death being furnished a fraternal benefit association, the proofs not being in strict conformity with the rules and by-laws of the order, no objection was made to the form of proof and the claimant was notified that the association "can not make payment until furnished with positive proof of death" and that "upon receipt of such proof of death, payment of the claim will be immediately made" it was *Held*, That strict conformity of the proof to the requirements of the by-laws was waived and the only thing necessary to establish liability was "positive proof of death."

Same—Same—"Positive Proof":

In a by-law of a fraternal benefit association providing that the association "shall only be liable for the payment of a death claim when there is positive proof of death," the words "positive proof" must be *Held*, To mean proof as positive as the circumstances reasonably offered and positive enough to satisfy the judgment of reasonable men. The production of the dead body of the deceased is not indispensable.

[Judgment for plaintiff below. Here affirmed against society.]

Mitchell v. Brotherhood of Locomotive Firemen & Enginemen (Neb. S. C.):

174 Northwestern Reporter (November 28, 1919) 442.

Death Benefits—Dependent—Evidence:

In an action by daughter claiming to be a dependent of the deceased against a union for death benefits, under the evidence the trial court was justified in finding that the daughter was not dependent and not entitled to the benefits.

Same—Same—Same—Appeal and Error:

Where the trial court saw and heard the witnesses, the appellate court will not overthrow the finding of the trial court, if there is any evidence to support that finding.

[Judgment for society below. Here affirmed in favor of society.]

Barner v. International Cigar Makers' Union of America, Local No. 33, et al. (Ind. App.):

124 Northwestern Reporter (December 2, 1919) 708.

Mutual Company—Statute—Knowledge of By-Laws:

St. 1917, Sec. 1927 and 1933 providing for the organization of town mutual fire insurance companies and making every policyholder a member, an applicant for insurance, who held other insurance and was, therefore, a member, was charged with knowledge of by-laws fixing the conditions of the insurance.

Same—Liability—By-Laws:

Where a by-law of a mutual insurance company provided that it should be liable for loss occurring after the application was received by the secretary until its rejection, it was not liable for a loss occurring before the application reached the secretary.

Same—Oral Contract with Agent—Liability of Company:

A by-law of a mutual company requiring the application to reach the secretary before liability is attached, prevented any liability on the oral contract of a soliciting agent made with applicant, who was already a member by reason of other insurance.

Same—When Liability Attaches—By-Laws:

St. 1917, Sec. 1933, requiring the applicant at the time of effecting insurance with mutual company to pay such sums as may be required by the rules or by-laws, does not make the insurance effective at that time, in contradiction of a by-law of the company making it effective from the time of secretary's receipt of the application.

Same—Authority of Agent—By-Laws:

Where the bond of an agent of a mutual company recited that he was appointed to solicit and write insurance, and further provided that he should not solicit or accept, except in accordance with the by-laws, such agent was not authorized to make the insurance effective from the date of the application contrary to the by-laws.

Appeal and Error—No cause of Action—Retrial:

In an action on an alleged insurance contract which never

became effective, the court will not remain for retrial as an action in tort for the agent's failure to forward the application without delay.

[Judgment in accordance with opinion.]

Goldberg v. Sigel et al. (Wis. S. C.):

174 Northwestern Reporter (December 5, 1919) 558.

Policy—Death—Violation of Law:

Where insured, who had been convicted and sentenced to hang for murder, escaped from jail and was killed by officers when committing a felonious assault upon them with a deadly weapon, an insurance contract upon his life was thereby voided.

Same—Same—Results of Crime—Incontestable Clause:

The incontestable clause in policy is valid and will be enforced in an action on the policy, but such a clause constitutes, not an insurance against the results of crime, but an insurance against the hazard of litigation.

Action on Policy—Incontestable Clause—Pleading:

In an action on a policy of life insurance, the "incontestable clause" should be set up by reply.

[Judgment for plaintiff below. Here reversed in favor of society.]

United Order of the Golden Cross v. Overton (Ala. S. C.):

83 Southern Reporter (December 13, 1919) 59.

Benefit Association—Subordinate and Superior Lodges—Status:

The various lodges of a fraternal benefit association, whether they are subordinate or superior, form one organization, although individual lodges may have distinctive rights and liabilities.

Same—Subordinate Lodge—Dissolution—Loss of Membership:

Where the charter of a subordinate lodge provided that it could not be dissolved voluntarily so long as ten of its members in good standing objected thereto, a member who had seceded from the order together with the majority of the members of a subordinate lodge, could not avail himself of such provision and claim that no dissolution had taken place, although a dissenting member might have done so.

Same—Same—Same—Same:

Where a member of a subordinate lodge seceded from the order together with other members, and established a rival lodge, he thereby forfeited his membership, and his widow could not subsequently claim benefits under the insurance contract.

Same—Assessment Due Grand Lodge—Tender:

Where the grand lodge of a fraternity benefit association calls upon a subordinate lodge for an assessment greater

than the amount actually due, a member of the subordinate lodge is not excused thereby from paying or tendering the amount legally due.

[Judgment in accordance with opinion.]

Marks v. United States Grand Lodge, Order of Brith Abraham (N. Y. C. Mun. C.):

178 New York Supplement (December 15, 1919) 536.

Action on Policy—Evidence—Witness:

Where, in an action on a benefit certificate, beneficiary testified that insurer had received overdue payment without requiring application reciting health condition of insured, it is not error, on cross examination, to allow witness to testify as to whether certain signatures to what purported to be such application were in the handwriting of the insured.

Fraternity Insurance — Reinstatement — Requirements — "Waiver":

"Waiver" is the intentional relinquishment of a known right on such conduct as warrants an inference of such relinquishment, and, where conduct is relied upon to constitute a waiver, it must appear that the insured was induced by the association to do or omit some act which he would not otherwise have done or omitted.

Same—Same—Same:

Where a fraternal society's by-laws provided that members should stand suspended upon non-payment of assessments within a required time and prescribed formal requirements for reinstatement, society, by regularly accepting without objection to irregularity, delinquent assessments from officer of subordinate lodge who had charge of collection of assessments and reinstatements of suspended members and who had accepted assessments without requiring compliance with by-laws, waived strict compliance with by-law requirements for reinstatement, although the by-laws provided against waiver of suspension.

Same—Same—Same—Question for Jury:

Question where society waived compliance with by-law requirements for reinstatement of members after failure to make prompt payment of assessment was for jury.

Same—Assessment Tender:

Where fraternal society had refused payment of assessment upon ground that member was suspended, it was unnecessary, in order to recover on certificate, to tender money subsequently due.

Same—Assessments—Agent:

Officer of subordinate lodge in collecting and remitting assessments and dues levied for maintenance of the association was the agent of the association and association will be presumed to have been advised of what he did in the discharge of his duties.

[Judgment for society below. Here reversed against society.]

Fahey v. Ancient Order of United Workmen (Ia. S. C.):

174 Northwestern Reporter (December 19, 1919) 650.

Fraternal Society—Assessments—Agent:

Under the evidence, the recorder of the local branch of a mutual benefit society, in collecting the monthly dues and assessments from the members, acted as the agent of the general society and not of the individual members, notwithstanding the provision of the by-laws to the contrary.

Appeal—Error—Finding of Court—Review:

Where the by-laws of a fraternal society provide that no benefit shall be paid on account of the death of a member whose death occurs while such member is to any extent, "under the influence of intoxicating liquor," and an action on a certificate is defendant on the ground that the member died while under the influence of intoxicating liquor, the question whether or not the member was under the influence of liquor "to any extent," within the terms of the contract in a cause tried to the court is one of fact, to be determined by the court and its finding, being supported by the evidence, is binding upon appeal.

Fraternal Society—Suspension—Reinstatement:

The policy issued by a fraternal life insurance company provided that a life benefit member suspended by the non-payment of the monthly rate may be reinstated within a certain time by complying with the by-laws of the company. *Held*, That the right to reinstatement does not die with the insured but passes to the beneficiary under the policy and may be exercised at any time during the period of extension.

[Judgment for plaintiff below. Here affirmed against society.]

Knights of Maccabees of the World v. Johnson (Okla. S. C.):

185 Pacific Reporter (December 22, 1919) 82.

Fraternal Order—Non-Payment of Assessments—Forfeiture:

A fraternal insurer cannot claim forfeiture after having legally accepted payments of subsequent assessments on the ground that its books showed that the member did not pay the assessments occurring a considerable period before his death.

Same—Same—Same—Estoppel:

Where a member of a fraternal insurance society who claims to have paid an assessment visited the company's office to make a protest as to the assessment and was informed that it had been received and a receipt forwarded, it was *Held*, That the society was estopped by the conduct of its collecting officer from claiming a forfeiture for non-payment of that assessment.

Same—Notice of Disability—Notice of Death:

Where a railroad mail clerk, as result of an alleged injury received while in line of duty, and no claim for disability was made during the interval between the injury and death, the fact that no notice was given of disability as required by

the constitution, which required notice in case of disability and death, would not, where notice of death was promptly given, preclude recovery of death benefits.

Action on Policy—Cause of Death—Evidence:

In an action against a fraternal benefit insurer, where the insurer claimed that death was the result of the effects of venereal disease, the beneficiary claimed death was the result of an accident, testimony of the members of the family, friends and neighbors as to his appearance before the accident and as to the appearance of the body after the accident was admissible to show that the member was not afflicted with disease, at least to the extent that it impaired his health and vigor.

Same—Same—Same:

In an action against fraternal benefit association evidence held sufficient to warrant finding that member met his death as result of accident and that death was not caused by disease.

Same—Same—Presumption:

There is a presumption against a self-inflicted injury.

[Judgment for plaintiff below. Here affirmed against society.]

R. R. Mall Assn. v. Johnson (Ark. S. C.):

215 Southwestern Reporter (December 24, 1919) 682.

Beneficial Associations—Constitution—Contract:

The constitution of a fraternal order becomes a part of the contract insuring its members and, if not inconsistent with the terms of the certificate, will be binding as part of the contract.

Same—Same—Prohibited Occupations:

Where the occupation of aviation was prohibited by the constitution of a beneficial association it was *Held*, Especially in view of other parts of the constitution, to be private occupation and not service in the aviation branch of the army.

Same—Same—Enlistment in Army:

Constitution of beneficial association prescribing terms on which a man in the army may be admitted to membership; *Held*, In view of other parts of constitution, not to affect members in good standing at time of adoption of amendment containing such provision.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp, Woodmen of the World v. Compton (Ark. S. C.):

215 Southwestern Reporter (December 24, 1919) 672.

Action on Policy—Prohibited Occupation—Recovery:

Where a fraternal order's life policy provided that persons engaged in the business of selling intoxicating liquor should

not be admitted and that the certificate of any member who should engage in any prohibited occupation should become void except on notice and payment of additional assessment, and insured, without notice or payment of additional assessment, was engaged for three months in the business of selling intoxicating liquor, his beneficiary cannot recover on his death.

[Judgment for plaintiff below. Here reversed in favor of society.]

Sovereign Camp, Woodmen of the World, v. Lenhard et al. (Tex. C. C. A.):

215 Southwestern Reporter (December 31, 1919) 979.

Application—Misrepresentation—Evidence:

In an action on policy, where insurer pleaded misrepresentation as to date of birth, it was *Held*, That the evidence supported a finding that the year of birth on application had been left blank by insured and subsequently erroneously filled in by someone else.

Same—Information—Waiver:

Where an applicant for a life insurance policy makes no statement as to age or imperfectly states it, insurer, by issuing the policy waives the information and is bound, notwithstanding that the age as given would have caused refusal of insurance.

[Judgment for plaintiffs below. Here affirmed against Society.]

Royal Neighbors of America v. Simms et al. (Tex. C. C. A.):

216 Southwestern Reporter (January 7, 1920) 240.

Fraternal Insurance—Action—Procedure:

A widow's petition to intervene in an action brought by son of decedent on a beneficial insurance policy was denied, the court holding that she should sue in assumpsit.

[Judgment in accordance with opinion.]

Sedlak v. National Slovak Society, etc. (Pa. C. P., Allegheny Co., C. O.):

68 Pittsburgh Legal Journal (January 10, 1920) 32.

Fraternal Associations—By-laws—Waiver:

A fraternal insurer may waive its by-laws as to monthly payment of assessments.

Same—Same—Same:

A waiver by a fraternal insurer of a by-law as to monthly payment of assessment may be established by evidence showing that such by-law had been abandoned, so that it was no part of the insurance contract.

Same—Same—Same:

In view of the by-laws of a fraternal insurer in force up to the time of the death of a member, and the evidence considered, it was *Held* to warrant a finding that insurer had

waived compliance with its by-law requiring monthly payments of assessments.

[Judgment in accordance with opinion.]

Langlois v. Association Canado Americaine (N. H. S. C.):

108 Atlantic Reporter (January 15, 1920) 289.

Fraternal Order—Suspension—Reinstatement:

Fraternal organization issued certificate to deceased in February, 1918. Deceased became suspended by reason of his failure to pay the assessments levied in August and September, 1918. On October 11, while he was in the hospital, through an attack of influenza, his sister paid the fees necessary to secure a reinstatement, signing a certificate that the deceased was in good health, and received a receipt from the local Financier, which provided that it was not binding until the member had been reinstated as provided by the lodge by-laws. Thereafter, on October 13, 1918, deceased died through the attack of influenza, without any action having been taken by the organization to reinstate him, pursuant to its by-laws and requirements. In an action on certificate, it was *Held*, That no principal of waiver applied to the reception of such payment so made and that the trial court did not err in directing a verdict for defendant.

[Judgment for society below. Here affirmed in favor of society.]

Moran v. Grand Lodge A. U. O. W. of North Dakota (N. D. S. C.):

175 Northwestern Reporter (January 16, 1920) 221.

Policy—Prohibited Occupation—Evidence Considered:

A member of fraternal order kept a hotel where intoxicating liquors were sold under a liquor tax certificate. He also kept a steam fitting shop in the rear of the hotel. It was *Held*, That such member was "engaged in or connected with" the manufacture and sale of intoxicating liquors, though he did not sell personally and was doing steam fitting work at the same time.

Action on Policy—Circumstance of Contract—Evidence:

In an action on benefit certificate, testimony of the decedent's son, as to what occurred between his father and the Deputy Supreme Chief Ranger of the order previous to the day when the papers were signed and that when they were signed, his father stated that his occupation was that of hotel keeper and steamfitter, the occupation of hotel keeper being prohibited by the by-laws of the order, as involving the sale of intoxicants, it was *Held* to be competent.

Same—Prohibited Occupation—Knowledge of Agent Imputed to Company:

The knowledge of the Deputy Chief Ranger of fraternal order, that an applicant was engaged in the prohibited occupation of selling intoxicants was chargeable to the order.

Application—Breach of Warranty—Evidence:

Where an applicant for membership in a fraternal order

stated to its Deputy Chief Ranger that he was a hotel keeper and steamfitter, there was no breach of warranty of the truth of all statements in the application, though the deputy wrote in the occupation of the applicant as that of a steamfitter only, presumably omitting the statement that he was a hotel keeper because such occupation was prohibited by the order.

Fraternal Order—Prohibited Occupation—Rights of Beneficiaries:

Though the provisions of the constitution and by-laws of the fraternal order, as well as the agreements in the application for membership, that no branch of the order and no officer had power to waive any of the provisions of the constitution, by-laws or contract, the rights of the beneficiary to the benefit payable for the death of her husband, a member, were not affected, where he was admitted as a member by the order itself when he was engaged in a prohibited occupation.

Same—Beneficiary—Remedies:

Beneficiary did not forfeit her right because of failure to appeal from the Supreme Chief Ranger of a fraternal order to its executive committee and to exhaust all other remedies within the order.

[Judgment in accordance with the opinion.]

Sweeney v. Independent Order of Foresters (N. Y. S. C.):

179 New York Supplement (January 19, 1920) 94.

Fraternal Benefit Order—Laws—Effect:

The laws of a benefit association are binding upon all its members and all are conclusively presumed to know them.

Same—By-Laws—Contract:

The laws of a mutual benefit association, providing that if a member should engage in a hazardous occupation without paying an extra rate, his beneficiary, at his death, would receive only \$300 for each \$1,000 of insurance, became part of the insurance contract of each member, and where insured was accidentally killed, while acting as a switchman, which he became after the inception of his contract, and without paying the extra premium for hazardous occupation, his beneficiary could claim insurance only to the extent of \$300 for each \$1,000 carried.

[Judgment in accordance with opinion.]

Miller v. Supreme Tent of Knights of Macabbees of the World (Wash. S. C.):

185 Pacific Reporter (January 19, 1920) 593.

Policy—Liability—Exemption—Waiver:

A fraternal benefit association, a member of which dies as a result of a risk with respect to which there is special exemption from liability, is not precluded from successfully asserting such exemption by accepting from the beneficiary,

with knowledge of the facts, payment of an assessment for the month within which the death occurred, which was, by the by-laws made due on or before the last day of that month.

[Judgment for society below. Here affirmed in favor of society.]

Rantin v. Fraternal Aid Union (Kan. S. C.):

185 Pacific Reporter (January 19, 1920) 729.

Action on Policy—Exempted Liability—Waiver:

Where insurer's by-laws provided for forfeiture of the certificate, if insured should become intemperate in the use of intoxicating liquor, or if his death should result directly or indirectly, from the use thereof, and insured died from the intemperate use of intoxicants and insurer knowing of such use, continued to accept assessments, such acceptance did not constitute a waiver by the insurer of the conditions relating to death of insured.

Appeal and Error—Instruction—Brief:

It is not necessary that the brief of appellant should contain all the instructions given in order to have the action of the court in giving and refusing to give certain instructions considered.

[Judgment for plaintiff below. Here reversed in favor of society.]

Modern Woodmen of America v. Stone (Ind. App.):

125 Northeastern Reporter (January 20, 1920) 420.

Application—Prohibited Occupation—Misrepresentation:

Where an applicant for membership in a fraternal order which classed saloon keeping as a prohibited occupation, falsely represented that he was not engaged in the saloon business, and thus procured a certificate, such certificate is null and void because of such misrepresentation.

Same—Misrepresentation—Estoppel:

Where the applicant for membership in a fraternal order falsely stated that he was not engaged in the saloon business and the clerk issuing the certificate testified that he did not know that the applicant was so engaged, the insurer is not estopped to rely on the false statement in the application, because it was well known in the community that the applicant was a saloon keeper.

Misrepresentation—Society not Estopped by Knowledge of Subordinate Officer:

Since Tex. Stat. provides that a fraternal insurer may provide by its constitution and by-laws that no subordinate body or subordinate officer shall have power to waive any of its provisions, no estoppel can arise against fraternal insurer because of the acts or knowledge of a subordinate officer where the by-laws contain such prohibition against waiver.

Prohibited Occupations—Acceptance of Premiums Estopped:

Where at the time insured became a member of fraternal

insurance company, which included saloon keeping within the prohibited occupations, the clerk of the fraternal insurer knew that insured was engaged in the business of a saloon keeper, the insurer, having accepted premiums paid is estopped from asserting invalidity of the certificate, although it was provided in the policy that an agent might not waive its condition.

Same—Knowledge of Agent—Estoppel:

To estop a fraternal insurer to claim a forfeiture because of member's false statements that he was not engaged in a prohibited occupation, it must appear that the clerk had actual knowledge that insured was engaged in the prohibited occupation and such knowledge cannot be presumed.

Fraternal Society—By-Laws—Prohibited Occupation:

Where insured from time of his application until death was a member of partnership engaged in the hotel and saloon business, insured managing the hotel and his partner the saloon, he was engaged in the saloon business within the by-laws of the order prohibiting the insuring of persons in such business, notwithstanding the clerk of the insurer construed the prohibition to extend to those actively selling intoxicants.

Policy—Incontestable Clause—Effect:

An incontestable clause added by the by-laws to a fraternal insurance certificate does not have a retroactive effect so as to make incontestable a certificate which had only been issued for a period of five years at the expiration of which time, it was provided there should be no contest.

[Judgment for plaintiff below. Here reversed in favor of society.]

Sovereign Camp Woodmen of the World v. Wernette
(Tex. C. C. A.):

216 Southwestern Reporter (January 21, 1920) 669.

Fraternal Benefit Order—By-Laws—Contract:

The by-laws of a fraternal benefit order become a part of its contract of insurance.

Change of Beneficiary—By-Laws—Validity:

When a fraternal benefit order by the voluntary direction of an assured has actually changed the beneficiary by the issuance of a new certificate in lieu of the original, such substitution is valid though the methods provided by the by-laws for a change of beneficiary have not been followed.

Fraternal Benefit Order—Revocation—By-Laws:

A by-law requiring that the revocation of the certificate and direction of substitution of beneficiary must be in the presence of certain officers of the society is not solely for the benefit of the society, but is a material and substantial requirement without conformity to which by the member during his lifetime, no substitution of the beneficiary can be legally effected.

Same—Right to Change of Beneficiary:

A member of a fraternal order has the unqualified right to change the beneficiary, and as well, the right to determine, how, when he can no longer speak, the fact of the change shall be ascertained and verified.

Same—Change of Beneficiary—Formalities:

Where a member of a fraternal benefit order, whose by-laws permit the substitution of beneficiary when revocation and direction were made in a prescribed form signed by the member and attested by the recorder of his lodge and forwarded to the Grand Recorder, signed instrument out of the presence of the recorder and the recorder later attested it, it cannot be said that the benefit order waived the failure of said member to sign the same in the presence of a recorder in the absence of a showing that the recorder was authorized to waive any right.

Same—Same—Same:

A signature by a recorder to an attestation clause in an instrument wherein assured directed a change of beneficiary was not good as an attestation where the recorder retained the instrument, intending, before forwarding the same to the Grand Recorder to interview assured to see that the signature purporting to be that of the assured was made by him.

Same—Same—Waiver:

Where a fraternal benefit order filed a bill of interpleader and deposited in court a sum due on a contract, it may be claimed by different persons, the benefit order thus waived rights of its own as to whether or not there was a valid change of beneficiary, but it could not waive the rights of the original beneficiary who claimed that such change of beneficiary was invalid.

- [Judgment in accordance with opinion.]

Grand Lodge A. O. U. W. of Maine v. Martin et al. (Me. S. C.):

108 Atlantic Reporter (January 22, 1920) 355.

Action on Policy—Non-Payment of Dues—Forfeiture:

A mutual benefit association may not declare a forfeiture of the policy where it has in its hands money belonging to the policyholder sufficient to pay the assessments due.

Same—Trial—Instruction:

In an action on insurance certificate wherein insurer claimed a forfeiture for non-payment of dues, an instruction by the court that "I can in a general way say that the law does abhor forfeiture" was harmless when considered in connection with the remainder of the charge.

[Judgment for plaintiff below. Here affirmed against society.]

Clifford v. Catholic Mut. Ben. Assn. (Mich. S. C.):

175 Northwestern Reporter (January 23, 1920) 242.

Action on Policy—Release—Defense:

Where in an action upon a fraternal insurance certificate,

the defendant pleads a settlement and release procured prior to the bringing of the suit, the plaintiff has the burden of showing that release was not binding.

[Judgment for plaintiff below. Here affirmed against society.]

Lucas v. Brotherhood of American Yeoman (Kan. S. C.):
185 Pacific Reporter (January 26, 1920) 901.

Benefit Insurance—Contract—Constitution:

When the decedent became a member of a Union operating an insurance department, she entered into a contract with the Union and the terms of that contract were those specified in the constitution of the union, as it then existed and the rights of the member must be determined under such constitution and such subsequent amendments as were reasonable.

Same—Heirs—Vested Interest:

The heirs of a member of a labor union which operated an insurance department had no vested interest in the death benefit under the union's constitution, where until the moment of the member's death she had the privilege to exercise her power to appoint a beneficiary and until which time there was uncertainty as to who were her heirs.

Same—Amendment of Constitution—Vested Rights:

Where the constitution of a labor union operating an insurance department permitted a member at the time of joining to designate her beneficiary, a subsequent amendment of the constitution to declare a forfeiture of such member's interest if she died without leaving a "widow," minor children, or any dependent relative unless she had designated a beneficiary in her lifetime, did not violate the vested rights of the member.

[Judgment in accordance with opinion.]

Tierney v. Perkins (Albany City C., N. Y.):

179 New York Supplement (January 26, 1920) 297.

Action on Policy—Cause of Death—Evidence:

Under evidence warranting finding that deceased member of fraternal order was killed by the discharge of a shot gun, the barrel of which he was using to open a gate after he had broken off the stock of the gun in an attempt to enter a neighbor's house, in search of his wife, who had left him when he began to abuse her, it was *Held*, That said deceased member did not meet his death as a result of his previous unlawful acts but that the accident occurred after he had calmed down and was no longer committing any unlawful act.

Same—Intoxication—Liability:

Where a member of a fraternal order was grossly negligent in using shot gun and as a result it was discharged and killed him, recovery was not precluded by reason of the provision of the certificate declaring that the same would be void if the member should meet his death as the direct re-

sult of intoxication, even though the member's negligence might have been largely the result of drinking intoxicants.

Appeal and Error—Facts—Review:

Where the verdict below was for the plaintiff, the appellate court will consider the facts in that light most favorable to plaintiff.

Same—Instruction—Invited Error:

Where the court gives an instruction too general in its terms, but also gives an instruction requested by defendant just as general, defendant cannot complain.

[Judgment for plaintiff below. Here affirmed against society.]

Ingle v. Sovereign Camp Woodmen of the World
(Springfield C. A., Mo.):

216 Southwestern Reporter (January 28, 1920) 787.

Fraternal Order—By-Laws—Waiver:

Fraternal benefit orders may, with notice or knowledge of facts, waive compliance with by-law requirements.

Same—Same—Same:

Where the by-laws of fraternal benefit order required member changing to hazardous occupation to "notify the clerk of the Camp." Notice of change of occupation to such clerk was notice to the society itself, and where the society, with such notice failed to increase the amount of dues and accepted payment of dues at the old rate up until the time of insured's death, it waived compliance with by-laws requiring payment of the higher rate for the hazardous occupation and for suspension of the member upon failure to do so.

Same—Change of Occupation—Retention of Premiums:

Where fraternal order with the knowledge that insured had changed occupation, which by its by-laws required payment of increased dues at an increased rate, retained the premiums paid at the old rate over a period of two years after such change of occupation, without offering to return such premiums, it is estopped to deny that the policy is valid or to claim that a forfeiture has not been waived.

[Judgment for plaintiff below. Here affirmed against society.]

Jeggin v. Sovereign Camp Woodmen of the World
(Kansas City C. A.):

216 Southwestern Reporter (January 28, 1920) 815.

Fraternal Insurance—Change of Beneficiary—By-Laws:

Where the by-laws or constitution of a mutual benefit society provide a method of making a change of beneficiary, a member in making a change must follow substantially the method prescribed.

Same—Same—Same:

The member of a mutual benefit society may change his beneficiary and name a new beneficiary whenever and as often as he pleases, provided he follows the stipulations required by the society's rules on the subject.

Same—Same—Same:

If the society has waived a strict compliance with its own rules for change of beneficiary and in pursuance of request of insured to change his beneficiary has issued a new certificate to him, the original beneficiary will not be heard to complain that the course laid down in the society's rules was not pursued.

Same—Same—Same:

If it is beyond the power of the insured to comply literally with the rules of society for change of beneficiary, a competent court will treat the change as having been legally made. Thus when a certificate is lost or when it is in possession of beneficiary who will not surrender it, and it is therefore, impossible for the member to comply with the rules, equity will enforce a change.

Same—Same—Death of Insured:

If the insured has pursued the course pointed out by the laws of the society for change of beneficiary, and has thus done everything devolving upon him to change the beneficiary, but before the new certificate issues, he dies, a court of equity will decree that to be done which ought to have been done, and act as though the certificate had been issued.

Same—Same—Same:

Rules of society required a member desiring a change of beneficiary to endorse an entry on his certificate, or a duplicate certificate and to obtain such he must make an affidavit and request that a duplicate policy issue and submit the same to the Supreme Directors. A member who lost his certificate and made out an affidavit stating that he wanted to change the beneficiary, and was told to first obtain duplicate of his certificate, and he then sent in an affidavit which entitled him to a duplicate policy, but before it was acted upon by the Supreme Directors, such member died, it was *Held*, That there was change of beneficiary and further that such member had not done all the things required of him to change the beneficiary, as the things remaining to be done were more than merely ministerial acts on the part of the society.

[Judgment in accordance with opinion.]

Barboza v. Concelho Supreme Da Irmandade Do Divina,
Espirito Santo Do Estado Da California (Faria et al.,
Interpleaders) (Cal. D. C. A.):

185 Pacific Reporter (February 2, 1920) 1028.

Fraternal Benefit Orders—"Blood Relative"—Definition:

An uncle and nephew are blood relatives and under the act providing for the organization and regulation of fraternal beneficiary societies a member of a beneficiary association may designate his uncle as a beneficiary in a certificate of insurance and thereby vest him with the right to the death benefits provided for in the certificate.

Action on Policy—Practice:

Affidavits filed in support of motion for continuance having been read and treated as a deposition, no error was committed in denying the motion.

[Judgment for plaintiff below. Here affirmed against society.]

Kloss v. Brotherhood of American Yeoman (Kan. S. C.):

185 Pacific Reporter (February 2, 1920) 1058.

Fraternal Benefit Order—Beneficiary—Betrothed:

Designation of beneficiary in benefit certificate as "intended wife" was held to be a valid description within the classification "betrothed", the word "betrothed" meaning one who has exchanged promises to marry with the holder of the certificate, and implied mutuality of agreement as does "intended wife."

[Judgment in accordance with opinion.]

Mace v. Grand Lodge A. O. U. W. of Massachusetts

(Mass. S. C.):

125 Northeastern Reporter (February 2, 1920) 569.

Fraternal Benefit Order—Funeral Benefits—Liability:

Where a fraternal and beneficial association had a membership in a funeral benefit association that paid a certain amount to the heirs of a deceased member of the fraternal and beneficial association in good standing at the time of his death, such fraternal and beneficial association could not avoid payment of such amount to the heirs of deceased member in good standing on the ground that it had not itself received such sum from the funeral benefit association, where it had erroneously represented to the funeral benefit association that the deceased was not in good standing at the time of his death.

Same—Dues—Default:

Where the dues of fraternal society for a quarter year, payable "on or before the last meeting night of March," they were not demandable prior to the last meeting night of March and member who had not paid such dues was in good standing until such time.

[Judgment for plaintiff below. Here affirmed against society.]

Washington Camp No. 32 Patriotic Order Sons of America v. Klug (Md. C. A.):

108 Atlantic Reporter (February 5, 1920) 521.

Foreign Fraternity Society—Doing Business without License—Service of Process—Estoppel:

In an action for agent's compensation, a foreign fraternal benefit society, doing business in the State of Arkansas in violation of Arkansas statute was estopped to deny that it had a license or that the superintendent of insurance was its agent for purpose of service of process.

Same—"Doing Business"—Service of Process:

Where a fraternal benefit society took over the membership of another fraternal benefit association, which was

doing business in the state, adopted the local organizations of the order taken over, attached riders to the policies assuming liabilities under the policies, levied and collected premiums and dues on the policies, paid losses and directed representatives of the merged company to solicit insurance, was "doing business" in the state within the meaning of Arkansas statute relating to service of process on foreign benefit societies.

Action for Agent's Compensation—Continuance—Practice:

In an action for agent's compensation, it was an error to refuse defendant a continuance on the ground that plaintiff changed the theory of his case at the trial in that the complaint alleged a direct contract, while the proof tended to show subsequent ratification of an unauthorized contract, where the contract rested on correspondence which defendant's counsel obtained in advance of the trial.

Same—Ratification of Employment Contract—Evidence:

Letters written by a fraternal benefit association were held sufficient to support a finding that such association ratified a contract of an association of members of such fraternal benefit association which had been illegally merged in another fraternal benefit association, to pay plaintiff for services rendered and to be rendered.

Same—Instructions—Ambiguity:

Any mere ambiguity carried in an instruction should be specifically pointed out to the court, or met by a correct request eliminating ambiguity.

Same—Same:

It is not error to refuse a requested instruction fully covered by given instruction.

[Judgment for plaintiff below. Here affirmed against society.]

North American Union v. Oliphint (Ark. S. C.):

217 Southwestern Reporter (February 11, 1920) 1.

Fraternal Benefit Order—Law Regarding Misrepresentation—Applicability:

The law that misrepresentations do not avoid life insurance policies unless material to the risk or actually contributing to the contingency, does not apply to fraternal benefit associations.

Same—Application—Examining Physician:

An insurance contract written by fraternal society making it the duty of the examining physician to require answer to every question and to explain to the applicant the meaning of terms used does not give the doctor or applicant the right not to require or give an answer to a question as to previous medical attention because he may not have been thought the thing for which he previously prescribed and treated the applicant was a disease within the meaning of the term as used.

Same—"Disease"—Definition:

The word "disease" as used in an insurance contract made

by a fraternal order and application question as to previous medical attention comprehended a cold and fever.

Same—Application—Forfeiture:

Answer in application that applicant had not consulted physicians when in fact he had so consulted them for a cold and fever rendered the insurance void.

[Judgment for plaintiff below. Here reversed in favor of society.]

Sovereign Camp of the Woodmen of the World v. Treadnor. (Tex. C. C. A.):

217 Southwestern Reporter (February 11, 1920) 204.

Fraternal Benefit Order—Payment of Dues While Ill—Recovery:

When the wife of a member of a fraternal society paid her husband's back dues, but the society returned the payment upon husband's application for sick benefits on the ground that the arrears had been paid when the husband was ill, the husband's acceptance of the return of dues was an admission that he had paid the money while ill and such acceptance again put him in default.

Same—Same—Same:

Where a member of a fraternal society was in default at the time of his death and could have received no benefits himself, his wife cannot recover death benefits.

[Judgment in accordance with opinion.]

Boisvert v. Republique Canadienne (N. Y. S. C.):

179 New York Supplement (February 16, 1920) 660.

Fraternal Benefit Orders—Beneficiaries—Statute:

The Iowa Legislature could not, prescribing conditions under which foreign mutual benefit association might engage in business in such state, prohibit the issuance of an insurance certificate when a beneficiary other than one of the classes named in the statute was designated.

Same—Same—Same:

The state has authority to prescribe the condition upon which a foreign corporation shall be allowed to do business within its boundary, and a statute as to designation of beneficiary in certificate of foreign mutual association does not violate the full faith and credit clause of the constitution.

[Judgment in accordance with opinion.]

Weiditschka v. Supreme Tent of Knights of Maccabees (Ia. S. C.):

175 Northwestern Reporter (February 20, 1920) 835.

Action on Certificate—Parties:

Where plaintiff, husband of deceased member of union, alleged that individually he was entitled to funeral benefits, and that as administrator he represented the heirs at law and was entitled to other benefits, it was *Held*, That there

was no inconsistency in allowing plaintiff to sue in such dual capacity.

[Judgment in accordance with opinion.]

Tierney v. Perkins (Albany City C., N. Y.):

179 New York Supplement (March 1, 1920) 904.

Action on Certificate—Change of Beneficiary—Statute:

Statute against the change of beneficiary is not retroactive.

Same—Witness—Evidence:

Certain testimony of a son touching a conversation between the father and other members of the family was admissible as not being a personal communication with decedent.

Same—Evidence—Demurrer:

There was no error in overruling demurrer to plaintiff's evidence or in the denial of a new trial.

Same—Proceeds—Equities:

The equities were in favor of the wife and children of insured as against daughter claiming under change of beneficiaries.

[Judgment in accordance with opinion.]

Gaston et al. v. Clabaugh (Kan. S. C.):

186 Pacific Reporter (March 1, 1920) 1023.

Action on Certificate—Beneficiary—Divorce:

Under Md. laws, providing that payment of death benefits shall be confined to wife, husband, relatives by blood to the fourth degree, etc., a decree of divorce a vinculo matrimonii terminated a beneficiary wife's right to payment of benefit on the death of her former husband, the persons named to receive benefits in the charter, constitution and by-laws of the fraternal order, being those mentioned in the statute.

[Judgment for society below. Here affirmed in favor of society.]

Dittmaier v. Supreme Conclave of Improved Order Hep-tasophs (Md. C. A.):

180 Atlantic Reporter (March 4, 1920) 794.

Fraternal Benefit Orders—Beneficiary—By-Laws:

Where the by-laws of a fraternal benefit society specified the classes to which beneficiary was required to belong, and further gave member the absolute right to designate as beneficiary any person within such classes, such society could not reject beneficiary named by member in his application where such person named was within the eligible class.

Same—Nature of Contract:

The contract between the member and the society consisted of the application for membership, the certificate of membership and the laws, rules and regulations of the order, and in a general sense the application may be regarded as

offer to contract and the certificate of membership as an acceptance of that offer.

Same—Alternate Beneficiary—Recovery:

The alternate beneficiaries designated in application for fraternal benefit certificate were entitled to recover on such certificate upon the death of the beneficiary, though such alternate beneficiaries were not named in the certificate.

Same—By-Laws—Instruction:

A by-law of the fraternal benefit society providing "in the event of the death of the beneficiary named in his certificate of membership before the death of such member, if no other designation has been made, the benefit should be paid to the widow," the words "if no other designation has been made," taken in their commonly accepted meaning plainly refer to any designation made by the member in his lifetime either before or after the death of the beneficiary named in the certificate.

Same—Customs—Effect:

The laws, rules and regulations of a fraternal benefit society which are binding upon a member of such society do not include mere customs or office rules designed to expedite its business which are not incorporated in and made a part of its printed matter distributed to its applicants and members to advise them of their rights and liabilities.

Same—Alternate Beneficiaries—Remarriage of Member:

The rights of the daughters of a member of a fraternal benefit society who were designated by such member as alternate beneficiaries in his application were not effected by the remarriage of such member after the death of his wife, the beneficiary named in certificate.

[Judgment in accordance with opinion.]

Supreme Assembly of United Artisans v. Johnson
(Wash. S. C.):

186 Pacific Reporter (March 8, 1920) 1065.

Action on Policy—Misstatement of Age—Defense:

That insured misstated his age and that the constitution and by-laws of insurer would not have permitted it to insure a person of his real age, constituted substantial defense in an action on the certificate.

Same—Application—Reformation:

An application to a fraternal order for life insurance may be corrected after the death of insured in order to make a copy of application conform to the original where the variance relating to insured's age could scarcely have escaped his attention.

Same—Same—Same:

Instruments may in proper cases, be reformed as between privies as well as between original parties.

Application—Mutual Mistake—Reformation:

Where there was a mistake in copying a date from in-

sured's original application and the copy with such error as to date was sent to insured who retained it and no correction was made by either party there was a mutual mistake, authorizing reformation of the copy.

Fraternal Benefit Orders—Contract:

Under insurance laws Sec. 58, which requires copy of application to be furnished insured, the policy with the papers attached, including copy of the application constituted the contract between the parties.

Same—Physician's Certificate—"Application":

A physician's certificate endorsed upon the reverse side of a life insurance application would not constitute part of the application within the meaning of insurance law Sec. 58, requiring a copy of the "application" to be furnished insured.

Same—Misstatement of Agent—Statute:

N. Y. law Sec. 101, Subd. 4 providing that insured's misstatement of his age shall merely reduce the face of the policy, is rendered inapplicable to fraternal benefit societies by Sec. 230, as amended by laws 1911 c. 198, exempting fraternal benefit societies from other insurance laws.

[Judgment in accordance with opinion.]

Stark v. Masonic Life Assn. (N. Y. S. C.):

180 New York Supplement (March 8, 1920) 235.

Action on Policy—Issues—Practice:

When a party adopts a theory upon which his case is tried and determined, he must abide by it on appeal.

Same—Health—Evidence:

The evidence conclusively showed that the insured was not in good health at the time of his reinstatement and the court rightly directed a verdict for the insurer.

[Judgment for society below. Here affirmed in favor of society.]

Pampusch v. National Council Knights and Ladies of Security (Minn. S. C.):

176 Northwestern Reporter (March 12, 1920) 158.

Fraternal Benefit Order—Repudiation of Policy—Measure of Recovery:

Where insurer repudiated its contract of life insurance during the life of insured, insured's measure of recovery was not the value of the policy but at most the premiums paid, with interest.

[Judgment for plaintiff below. Here reversed in favor of society.]

Grand Lodge Brotherhood of Railroad Trainmen v. Martin (Tex. C. C. A.):

218 Southwestern Reporter (March 17, 1920) 40.

Beneficial Insurance—By-Laws—Waiver:

At the trial in court against the beneficial corporation, the provision of the by-laws requiring claims to be passed upon by a committee before an appeal to the courts could be

taken, was waived where the evidence showed that claim had been refused although the method provided had not been regularly followed and defendant association motion for new trial refused.

[Judgment in accordance with opinion.]

Etzler v. Westinghouse Electric & Mfg. Co., Relief Dept., a Corp. (Allegheny Co. C. P., Pa.):

68 Pittsburgh Legal Journal (March 20, 1920) 198.

Action on Policy—Application—Misrepresentations:

Whether or not insured had made misrepresentations in his application was a question for the jury.

Medical Examination—False Answers—Recovery:

False answers to questions in medical examination warranted to be true avoided the contract of insurance.

Same—Misrepresentations—Instructions:

An instruction to the effect that, although false answers were knowingly made, the plaintiffs were entitled to recover unless the matters misrepresented increased the risk, was erroneous.

[Judgment for plaintiffs below. Here reversed in favor of society.]

Farm et al. v. Royal Neighbors of America (Minn. S. C.):

176 Northwestern Reporter (March 26, 1920) 489.

Fraternal Benefit Order—Contract—Constitution and By-Laws:

A fraternal benefit order by the adoption of amendments to its constitution or by-laws cannot defeat or abridge essential and substantial rights created by a covenant previously entered into in a certificate of insurance issued by it, notwithstanding the insured's agreement to a stipulation in the covenant that such certificate was accepted by him subject to the laws of the order then in force or which might thereafter be enacted.

Same—Same—Same:

A provision in a certificate of a fraternal benefit order that a certain proportionate part of the value of the covenant will be paid to the assured as an accident benefit created an essential and substantial right in the assured and a reduction of this benefit by a subsequent change in the constitution or by-laws of the order is such a material change in the certificate as defeats or abridges that right.

Same—Same—Same:

Even though a member of a fraternal benefit order in his original covenant agrees to be bound by future changes in the by-laws an alteration made subsequent to the issuance of the covenant will be given prospective operation in the absence of a clear intent that it shall operate retrospectively.

[Judgment for plaintiff below. Here affirmed against society.]

Eminent Household of Columbian Woodmen v. Epps (Ga. C. A.):

102 Southeastern Reporter (March 27, 1920) 174.

Action on Policy—"Total and Permanent Blindness"—Color Blindness:

Where a certificate or policy of insurance issued by the Locomotive Engineers' Mutual Life & Accident Insurance Association contains the following: "Any member of this association * * * sustaining the total or permanent loss of sight in one or both eyes shall receive the full amount of his insurance * * * This association will not recognize a claim for the insurance of any certificate holder for impaired eyesight, but for total and permanent blindness only, in one or both eyes" and a suit is brought against such association seeking to recover for total and permanent blindness, the petition alleging that the plaintiff had become color blind in both eyes, under the terms of the policy or certificate the company is not liable, as color blindness does not amount to total and permanent blindness within the meaning of the policy.

[Judgment for association below. Here affirmed in favor of association.]

Fallin v. Locomotive Engineers' Mut. Life & Accident Ins. Assn. (Ga. C. A.):

102 Southeastern Reporter (March 27, 1920) 177.

Action on Certificate—Statute—"Fraternal Order":

Rev. 1905 Sec. 4804 N. C. Stat. providing that statements in applications for policy shall be deemed representations and not warranties and shall not prevent recovery unless material or fraudulent is applicable to certificate of fraternal benefit associations incorporated under the laws of another state, providing for death benefits in excess of \$300.00; such association not being a "fraternal order", to which such statute does not apply under Sec. 4794 as admitted by laws 1913 c. 46, but a fraternal benefit society as distinguished from fraternal order under such statute and Sec. 4795.

[Judgment for plaintiff below. Here affirmed against society.]

Gay v. Woodmen of the World (N. C. S. C.):

102 Southeastern Reporter (March 27, 1920) 195.

Fraternal Benefit Order—Vested Rights—Modification:

A mutual benefit association has no power to change or modify vested rights under existing policies, or to substitute a lesser amount where a larger amount is due policyholder.

Same—Same—Same:

Where a court had adjudged that an amendment of by-laws of a mutual benefit association as to the amount of death benefit, was not effective as to prior certificates there was no basis for a compromise for a less amount with the beneficiaries of prior certificate, pending appeal from such adjudication.

Mistake—Fraud—Equity:

It is the duty of equity to award relief where there is mistake or loss on one side and fraud on the other.

Same—Same—Fraternal Benefit Order:

A court of equity will not permit a mutual benefit association to retain the benefits of deception in obtaining a settlement, which the conduct of its officers induced under a plea that they did not intend to deceive and defraud plaintiffs beneficiaries; in such a case wrongful intent is presumed.

Same—Deception—Burden of Proof:

Where the mutual benefit association received from the husband of plaintiff in the course of twenty odd years \$1,497.68, for \$2,000.00 insurance for the benefit of plaintiff and association paid plaintiff, widow, only \$1,074.38 and procured from her release, the burden of proof is on the association to show that the transaction was fair.

Suit to Set Aside Settlement—Tender of Money Paid—Necessity:

In an action by beneficiary against mutual benefit association to set aside a compromise agreement, there was no necessity for plaintiff to tender back money received on the settlement.

[Judgment in accordance with opinion.]

Donaldson v. Supreme Council Catholic Benev. Legion.
(N. Y., App. Div.):

180 New York Supplement (March 29, 1920) 598.

Death—Presumption—Statute:

Mo. Stat. restricting rule as to presumption of death after seven years absence to cases where resident goes from and does not return to the state, does not exclude the common law rule on the same subject.

Fraternal Benefit Orders—By-Laws—Statute:

Fraternal benefit orders cannot enact and make as a part of their insurance contract by-laws which are contrary to statute.

Same—By-Laws—Proof of Death:

By-laws of fraternal benefit order providing that proofs of death of insured cannot be based on presumption arising from seven years absence are valid.

[Judgment in accordance with opinion.]

Cobble v. Royal Neighbors of America (Mo. C. A.):

219 Southwestern Reporter (April 14, 1920) 118.

Fraternal Benefit Order—By-Laws—Forfeiture:

The clause under which a fraternal benefit order claims the rights of beneficiary are forfeited by a self executing provision for forfeiture in the event of delinquency in payment of assessments must be sustained by the courts.

Same—Same—Same:

Where a member of a fraternal benefit insurance order frequently became delinquent in the payment of his monthly assessment and each time, with but one exception, his de-

fault was relieved within the time and within the manner prescribed by the by-laws, such reinstatements as provided by the contract did not operate to modify it or to estop the order from asserting rights under the self executing provision in its by-laws for forfeiture in event of delinquency and where such member died while delinquent there can be no recovery on any ground of any modification of the contract or estoppel.

[Judgment for plaintiffs below. Here reversed in favor of association.]

Phillips et al. v. Fraternal Reserve Assn. (Wis. S. C.):
176 Northwestern Reporter (April 16, 1920) 851.

Fraternal Benefit Order—Policy—By-Laws:

While the general rule is that where a policy is issued by a mutual insurance or benefit insurance society, the insured becomes a member of the society and must take notice of and be bound by its by-laws although they are not recited in the policy or expressly made a part thereof, yet where the terms of the policy conflict with a by-law of the society, it having power under its charter to issue such a policy, the society must be deemed to have waived the provisions of the by-laws in favor of the insured and the policy will control the rights of the parties.

[Judgment for plaintiff below. Here affirmed against society.]

Independent Order of Puritans v. Cadden (Ga. C. A.):
102 Southeastern Reporter (April 17, 1920) 454.

Fraternal Benefit Order—By-Laws—"Dispensation":

The word "dispensation" as employed in the by-laws of a fraternal benefit order giving certain officer power to grant dispensation to initiate applicants for membership, means "an exemption from such laws; a permission to do something forbidden; an allowance to omit something commanded."

Same—Same—Same:

Where the Supreme Chief Ranger of a fraternal benefit organization had power to grant dispensations to applicants for membership such as he might deem to be in the interests of the order, and to vest his deputy with powers additional to those given him in the constitution and by-laws, such deputy, in absence of proof to the contrary, will be held to have had authority to approve an applicant and to classify an applicant as to his occupation, etc.

Same—Contract—Public Policy:

An agreement contained in application for membership in a fraternal benefit organization as well as provision in the by-laws and constitution of the order to take the agent of the association as the representative of applicant and not the association, is invalid as against public policy.

Policy—Delivery—Evidence:

Possession of a fraternal benefit order certificate was presumptive evidence of delivery.

[Judgment for plaintiff below. Here affirmed against society.]

Sweeney v. Independent Order of Foresters (N. Y., App. Div.):

181 New York Supplement (April 19, 1920) 4.

Fraternal Benefit Order—By-Laws—Proceeds:

Where upon the death of the beneficiary wife before her husband under the by-laws of the fraternal benefit society, the member's second wife was entitled to the proceeds of the certificate and such fund was not impressed with any trust for the support of the member's children by his first marriage.

Same—Proceeds—Statute:

Tenn. Stat. providing that insurance on the life of the husband shall inure to the benefit of his widow and children or next of kin is not applicable to a certificate issued by a fraternal benefit society.

[Judgment in accordance with opinion.]

Peacock v. Joyce (Tenn. S. C.):

219 Southwestern Reporter (April 21, 1920) 350.

Action on Certificate—Prohibited Occupation—Recovery:

Where the fraternal benefit certificate provided that it would be suspended while the member was employed in a certain prohibited occupation the beneficiary in an action on such certificate cannot recover where the member was employed in a prohibited occupation at the time of his death, notwithstanding his death was from natural causes and did not result from exposure to danger incident to such employment.

Same—Forfeiture—Construction:

A life certificate will not be construed so as to work a forfeiture if there is any other reasonable construction which may be applied.

Same—Same—Burden of Proof:

The burden of proving invalidity of certificate and forfeiture is upon insurer.

Assessments—Acceptance—Estoppel:

Where a member of a fraternal benefit order lost his original certificate and made application for a new one which was issued by the society with knowledge that previously the member had engaged in a prohibited occupation in which he was no longer employed and thereafter accepted payment of assessments, it was estopped to deny liability under the second certificate on the ground that the original certificate was forfeited by reason of such prohibited employment.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp of Woodmen of the World v. Akins (Tex. C. C. A.):

219 Southwestern Reporter (April 21, 1920) 492.

Action on Certificate—Health—Misrepresentation:

Evidence considered and held to show misrepresentation as to health of insured.

Fraternal Benefit Order—Misrepresentations—Statute:

Tex. Stat. providing that misrepresentations in application shall not constitute a defense to suit on policy unless it was material to the risk or actually contributed to the contingency upon which the policy became due and payable is not applicable to contracts of insurance made by fraternal benefit orders.

Application—False Representations—Forfeiture:

In the absence of the statute to the contrary, false representations in an application for insurance warranted to be true by the applicant will avoid a policy without reference to the materiality of such statements.

[Judgment for plaintiff below. Here reversed in favor of society.]

Modern Woodmen of America v. Atcheson (Tex. C. C. A.):

219 Southwestern Reporter (April 21, 1920) 537.

Action on Certificate—Prompt Payment of Assessments—Waiver:

In an action on a certificate evidence of conduct of a first group of defendant fraternal society amounted to a waiver of prompt payment of assessments was admissible in evidence, though the member afterwards joined another group of the society.

[Judgment for plaintiff below. Here affirmed against society.]

Kozlak v. Polish National Alliance of the United States of North America (Minn. S. C.):

176 Northwestern Reporter (April 23, 1920) 911.

Fraternal Benefit Order—Constitution and By-Laws—Contract:

The constitution and by-laws of a fraternal benefit order constitutes part of the contract of insurance, and where a member failed to pay dues as required by constitution and by-laws, he automatically became suspended.

Same—Payment of Assessment—Estoppel:

Where the clerk of the lodge of the fraternal benefit insurer failed to draw an assessment on a payment in accordance with a course of dealing with a member, the society was estopped to deny payment of the assessment.

Same—Constitution and By-Laws—Waiver:

Generally, officers and lodges of a mutual benefit society are without authority to waive the provision of society's by-laws and constitution.

"Waiver"—"Estoppel"—Interpretation:

The terms "waiver" and "estoppel" though often used interchangeably in regard to insurance contracts are really

distinguishable, waiver being an intentional abandonment or relinquishment of a known right and estoppel being preclusion by conduct from asserting rights which might otherwise have existed.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp Woodmen of the world v. Newsom
(Ark S. C.):

219 Southwestern Reporter (April 28, 1920) 759.

Foreign Society—Service of Process—Estoppel:

A foreign fraternal society operating without license was estopped to deny due service of process upon superintendent of insurance.

Same—Same—"Doing Business":

Where a foreign fraternal society took over a domestic society in a merger, assumed its certificates, negotiated with local agent of domestic society regarding claims and continuance of business was doing business in the state within the meaning of Arkansas statute relating to service of process.

Same—Contract—Law Governing:

Where an Illinois fraternal benefit society merged with an Arkansas society assuming the latter's obligations and issued a certificate in lieu of one issued by the domestic society, and such certificate recited that the constitution, laws, rules and regulations of Illinois society were made a part thereof, and its laws expressly provided that its contract should be construed as an Illinois contract, the validity of such certificate must be determined by the laws of the State of Illinois.

Fraternal Benefit Order—Laws—Contract:

The laws of a fraternal benefit order form a part of the insurance contract.

Same—Merger—Statute:

Under the laws of the state of Illinois, a fraternal benefit order has no power to merge with another fraternal benefit order where neither its charter nor the act under which it was organized permits such a merger.

Same—Medical Examination—Same:

Under the laws of the State of Illinois, a certificate issued by a fraternal benefit order without a medical examination is void.

Same—Illegal Merger—Contract:

Where an Illinois fraternal benefit order, subsequent to an illegal merger with an Arkansas society issued a certificate to plaintiff member of such Arkansas society, such certificate was construed as a new contract with the Illinois society.

[Judgment for plaintiff below. Here affirmed against society.]

North American Union v. Johnson (Ark. S. C.):

219 Southwestern Reporter (April 28, 1920) 769.

Action on Policy—Non-Payment of Assessment—Burden of Proof:

In an action on a benefit certificate the non-payment of assessments is a matter of defense and the burden is on insurer.

Same—Notice of Assessment—Question for Jury:

In an action on a benefit certificate whether insured had received notice of assessment was question for jury.

Same—Same—By-Laws:

Where the by-laws of a benefit society required notice of assessments to be sent members of society by lodge officers, the failure of the local agent or financial secretary to send such notice was not chargeable to the member, and non-payment of the assessment would not deprive her of good standing.

Same—Same—Evidence:

The deposit in the mail of a notice to a member of a fraternal benefit society of an assessment was prima facie evidence of her receipt of such notice.

[Judgment for plaintiff below. Here affirmed against society.]

Carden v. Sons and Daughters of Liberty (N. C. S. C.):
102 Southeastern Reporter (May 1, 1920) 610.

Fraternal Benefit Order—Contract:

The certificate of membership together with the constitution and by-laws of the association constitute a fraternal insurance contract.

Same—By-Laws—Amendments:

The by-laws of a fraternal benefit association may be amended and such amendments made binding on persons already members, providing the amendments are legally made and are reasonable in their terms and operation.

Same—Policy—Forfeiture:

Forfeiture of member's certificate in fraternal benefit orders is not favored by the law.

Same—Constitution and By-Laws—Amendment:

Where the constitution of a fraternal benefit order, at the time the certificate was issued, provided for payment to the heirs of the members in the absence of a designation of beneficiary, a subsequent amendment providing that in case no beneficiary was designated and there were no surviving dependant all right to the benefit should terminate, was unreasonable and would not prevent recovery on the certificate by the heirs of a deceased member.

[Judgment in accordance with opinion.]

Tierney v. Perkins (N. Y., Sp. Tr., Albany Co.):
181 New York Supplement (May 3, 1920) 319.

Fraternal Benefit Order—Agent—Estoppel:

An inferior lodge of a mutual benefit society is, as a general rule, the agent of the supreme lodge and of the society and its acts and omissions to act may constitute grounds for estoppel against the society or a waiver of a right of forfeiture.

Same—Same—Same:

A mutual benefit society or supreme lodge is bound by the acts of the inferior lodge and the officers of such, only as agents and before the act or omission of the inferior lodge can be binding upon the society or supreme lodge, it must appear that the act of the inferior lodge was within authority granted to it, or if an omission, before it constitutes a waiver or estoppel to the society it must appear that the omission was to do something which the inferior lodge had authority as an agent to do for the society and which was the duty of the society or supreme lodge to do or cause to be done.

Same—Same—Same:

Where the subordinate council of a mutual benefit society failed to perform its covenants to pay the dues of a sick member, the society was estopped to rely on non-payment of dues and assessments by such sick member as ground of refusal to pay the insurance.

[Judgment for society below. Here reversed against society.]

Scruggs' Guardian v. Knights and Ladies of Security (Ky. C. A.):

219 Southwestern Reporter (May 5, 1920) 1054.

Action on Policy—Retention of Premiums—Estoppel:

Where a local council of a fraternal benefit organization failed in the performance of its duty to pay taxes for the support of the state council for five consecutive years and until such failure became habitual and the state council knew it and made no complaint about it until December 1915, and a member of the local council continued to pay his assessments up to the time of his death in February, 1916, without knowledge of the default of the local council, the state council and the national council of the organization were estopped to set up the breach to defeat an action by the beneficiaries of such deceased member to recover the insurance benefits.

[Judgment for plaintiff below. Here affirmed against society.]

Dillingham et al. v. National Council Junior Order of United American Mechanics (S. C. S. C.):

102 Southeastern Reporter (May 8, 1920) 721.

Fraternal Benefit Order—Waiver—By-Laws:

Provision in by-laws of a fraternal benefit order that no officer of the Southern Camp should have power of waiver is not authorized by Tex. Rev. Stat. 1911, Art. 4847, providing

that constitution and laws of a benefit insurance society may provide that no subordinate society or its officers shall have the power to waive any provision.

Health—Misrepresentation—Estoppel:

Where insurer's medical examiner advised insurer the true facts regarding health of insured, insurer with such knowledge was estopped to rely on false statements by insured, as to his health.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp Woodmen of the World v. Nash (Tex. C. C. A.):

220 Southwestern Reporter (May 12, 1920) 235.

Action on Policy—Constitution and By-Laws—Contract:

The constitution and by-laws of a fraternal benefit society form part of the contract of insurance of one holding a benefit certificate therein.

Same—Same—Presumption:

The holder of a benefit certificate in a fraternal benefit society is conclusively presumed to know the constitution and by-laws of such society.

Same—Prohibited Occupation—Forfeiture:

Where the by-laws of a fraternal benefit society provided that a beneficiary certificate should become void if insured engaged in the saloon business without giving notice to the society and paying addition assessment, the failure of the beneficiary to give such required notice after engaging in such business forfeited the certificate.

[Judgment for society below. Here affirmed in favor of society.]

Carter v. Sovereign Camp Woodmen of the World (Tex. C. C. A.):

220 Southwestern Reporter (May 12, 1920) 239.

Action on Policy—Reinsurance—Original Liability:

Where a beneficiary association reinsured all its members under a group policy and thereafter assessed its members \$3.50 per month in place of another form of assessment which had amounted to about \$5.00 per month, it was *Held*, That the defendant beneficiary association's liability to the beneficiary of insured is governed by the provisions of the beneficiary certificate and not by the provisions of the group policy in absence of a showing that insured consented to reinsurance or to a modification of his certificate.

Same—Same—Same:

Where a beneficiary association reinsured all its members under a group policy and assessed the members \$3.50 per month in place of another form of assessment which therefore had amounted to about \$5.00, in an action by a beneficiary it was *Held*, That the fact that insured paid the assessments of \$3.50 in place of the old form of assessment

does not estop his beneficiary from claiming under the original certificate.

[Judgment for plaintiff below. Here affirmed against society.]

Wilson v. Police Beneficiary Assn. (Pa. S. C.):

109 Atlantic Reporter (May 13, 1920) 596.

Action on Policy—Payment of Assessment—Suspension:

Where the by-laws of a fraternal benefit association provided that if the beneficiary payment be not paid during the month the member is suspended, payment made after expiration of the month will not revise membership.

Same—Delinquency—Burden of Proof:

In an action on a fraternal benefit certificate, the burden of proving that a member was delinquent in payment of assessment is in insurer.

Same—Same—Evidence:

In an action on fraternal benefit certificate the evidence warranted finding that the member was not delinquent in payment of dues.

[Judgment for plaintiffs below. Here affirmed against company.]

Sullivan et al. v. Supreme Catholic Mut. Benefit Assn. (Pa. S. C.):

109 Atlantic Reporter (May 13, 1920) 604.

Action on Policy—Payment—Fraud:

In an action by the beneficiary of a fraternal benefit certificate against the society and the presiding officer of a subordinate lodge wherein the defense of payment and receipt in full was pleaded, it was *Held*, That the evidence sufficiently supported allegation that such presiding officer fraudulently represented to plaintiff that the society refused to pay the full amount when in fact he had orders at the time for full payment.

Same—Same—Same:

Where a beneficiary of a fraternal benefit certificate gave a receipt in full payment, such receipt is not binding if procured by misrepresentations of insurer's committee.

Same—Same—Evidence:

Where the beneficiary of the fraternal certificate of insurance gave a receipt for payment in full on representations by the presiding officer of the subordinate lodge that only part could be collected such receipt was only prima facie evidence of its correctness and plaintiff could by parol evidence show the true amount of money paid.

[Judgment for plaintiff below. Here affirmed against society.]

Norwood v. Most Worshipful Grand Lodge of North Carolina Free and Accepted Ancient Masons et al. (N. C. S. C.):

102 Southeastern Reporter (May 15, 1920) 749.

Fraternal Benefit Order—Beneficiary—Statute:

Ohio Statute authorized benevolent association to pay benefit funds levied by assessment upon its members to the "family or heirs" of the association's members. Although such association could not by its articles of incorporation extend the classes named in the statute, it could thereby limit the classes to whom its benevolence should be paid and provide in its charter only "to the families" of the members.

Same—Family—Definition:

Where a member designates as his beneficiary a brother who did not live with him at the time of the designation or since, such brother was not one of the family of deceased member within contemplation of the statute and articles of incorporation in force at the time of the designation, and such designation was invalid.

Beneficiaries—Charter—By-Laws:

A by-law adopted by a benevolent society enlarging the class of beneficiary fixed in its charter is unauthorized and void.

[Judgment in accordance with opinion.]

Wegener v. Wegener (O. S. C.):

126 Northwestern Reporter (May 18, 1920) 892.

Fraternal Benefit Order—Suspension—By-Laws:

Where in an action on a fraternal benefit certificate the society defended on the ground that the member who had been sick, had been found by the local lodge able to work and suspended for non-payment of assessments, the authority to try such member should have been shown by the production of the regulation or by-law conferring such authority.

Action on Policy—Contract—Evidence:

In an action on a fraternal benefit certificate, parol evidence as to the member's right to benefits and his obligation to pay assessments while sick was inadmissible where there was a written constitution and by-laws to which such member was required to conform by the terms of his certificate as to constitute the best evidence of the member's right and obligation.

[Judgment for plaintiff below. Here reversed in favor of society.]

Rural Home Lodge No. 1720, Grand United Order of Odd Fellows of Little Rock v. Sea (Ark. S. C.):

320 Southwestern Reporter (May 19, 1920) 305.

Action on Policy—Non-Payment of Dues—Forfeiture:

Fraternal benefit society was not liable on the death of a member from an injury received at a time when he was several months in arrears for dues and assessments, the society's constitution and certificate expressly providing that any member in arrears should stand suspended from the rights to any indemnity, and that on restoration to good standing the society should not be liable on account of any accident or injury received at time of suspension.

Same—Same—Waiver:

A fraternal benefit society by receiving dues from a delinquent member and reinstating him at a time when such member was suffering from an injury which caused his death, and such fact was unknown to the officer of the society who received the money, did not waive the condition of the contract exempting it from liability on account of injury received by a member while suspended for delinquency.

[Judgment for plaintiff below. Here reversed in favor of society.]

Order of United Commercial Travelers of America v. Belue (U. S. C. C. A.):

263 Federal Reporter (May 20, 1920) 502.

Application—Insanity—Health:

Where an application prepared by insurer in one question asked as to insanity of parents, grandparents, aunts and uncles, and, in the next question asked as to the health of parents, grandparents, brothers and sisters, it clearly gave the applicant to understand that information as to insanity of brothers and sisters was not their desire and that the general term "health" as there used, pertained to physical and not mental soundness.

[Judgment for plaintiff below. Here affirmed against society.]

Villicott v. Sovereign Camp of Woodmen of the World (Minn. S. C.):

177 Northwestern Reporter (May 21, 1920) 356.

Fraternal Benefit Order—Death Benefits—Actions:

The right of action, if any, for the death benefits under a benefit contract of insurance was against a national council of society and not against the local council.

Same—Same—Same:

Had the local council of the society failed and refused to perform its duty to the member by failing to pay the premium due to the funeral benefit department of the national council of the society, a right of action would arise in favor of the legal dependant against the local council for damages, and the legal measure of the damages would be the value of the policy.

[Petition against local council dismissed below. Here affirmed in favor of local council.]

Gilbert v. Dalton Council No. 30. J. O. U. A. M. (Ga. C. A.):

102 Southeastern Reporter (May 22, 1920) 831.

Action on Policy—Change of Occupation—Notice:

Where the by-laws of a fraternal benefit insurer directed a member, on changing his occupation, to give notice to the clerk of the local camp of the society, notice to such clerk is notice to the insurer

Same—Same—Waiver:

Where a member of a fraternal benefit order in accordance with the society's by-laws notified the clerk of the local

camp that he had become a wholesale liquor dealer and was ready to pay any increased premium if that was a prohibited occupation, and only the old premiums were exacted from the member, the fraternal insurer waived the right to demand the higher premium for such change of occupation.

Same—Prohibited Occupation—By-Laws:

Where the by-laws of a fraternal benefit order named as prohibited occupation, saloon keeping, bar tending, retailing of intoxicating liquor as a beverage and the manufacturing of intoxicants, such by-laws do not extend to wholesale distribution of intoxicants by a member who did not personally handle the same save by construction, and therefore is no basis for forfeiture of the member's insurance on the ground that he had become a wholesaler and did not pay the increased rate for engaging in prohibited occupation.

Fraternal Benefit Order—Subordinate Body—Waiver:

A fraternal insurer itself may waive compliance with its by-laws, though its subordinate body has no power of waiving.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp of Woodmen of the World v. Miller
(Tex. C. C. A.):

220 Southwestern Reporter (May 26, 1920) 635.

Fraternal Benefit Order—Beneficiary—By-Laws:

As the rules and by-laws of a fraternal benefit society are intended for its own protection, only the society can take advantage of the provisions and only the society can raise the objection that the beneficiary does not come within the class who may be designated.

Same—Same—Waiver:

A fraternal benefit society by depositing the insurance fund in court under a bill of interpleader waived its right to question the claim of insured's divorced wife, under a certificate designating her as beneficiary on the ground that by its by-laws, such designation ceased when the divorce was obtained, where the laws of the state of its organization and the state in which the member lived, such designation was proper.

Fraternal Certificate—Divorced Wife—Beneficiary:

Where a fraternal benefit society organized in Massachusetts issued a certificate to a resident of New York, designating his wife as beneficiary and she obtained a divorce but continued to receive sums from him for maintenance, neither the statute of Massachusetts or those of New York defeated her right to the benefit in favor of his next of kin.

[Judgment in accordance with opinion.]

Supreme Council of Royal Arcanum v. Churlo et al.
(U. S. D. C.):

263 Federal Reporter (May 27, 1920) 755.

Foreign Society—Limitation of Actions—Statute:

A contract of insurance delivered in the state of Florida through a local agency is subject to the laws of that state, one of which laws makes void any contract reducing the statutory limitation for instituting suits.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp of Woodmen of the World v. Mixon
(Fla. S. C.):

84 Southern Reporter (May 29, 1920) 171.

Fraternal Benefit Order—By-Laws—Beneficiary:

The objection that beneficiary named did not belong to one of the classes from which beneficiary was to be chosen under the constitution and by-laws of the fraternal insurer, could be raised only by the society and would not entitle the member's heirs to proceeds of the certificate upon payment thereof into court by the society.

Ineligible Beneficiary—Payment into Court—Waiver:

Where fraternal insurer made payment of proceeds of the fraternal certificate into court on a bill of interpleader, it waived its right to resist the claim of the named beneficiary on the ground that she was not one of those whom a member was authorized by the constitution and by-laws to be designated as a beneficiary.

Fraternal Benefit Order—"Insurable Interest"—Definition:

That a beneficiary may have an "insurable interest" in the life of insured, the continuance of the life of insured must be to the beneficiary's advantage or benefit, or the insured must be under some obligation to render the beneficiary care and assistance in time of need.

[Judgment in accordance with opinion.]

Sovereign Camp of Woodmen of the World v. Muth et al. (N. J. Ch.):

109 Atlantic Reporter (June 3, 1920) 853.

Action on Policy—Practice:

An action was brought by testator's son on a beneficial insurance policy. On petition of widow to intervene; *Held*, That she should sue the beneficial society in assumpsit, and the rule to intervene was dismissed.

[Rule to intervene dismissed.]

Sedlak v. National Slovak Society, etc. (Pa. C. P., Allegheny Co.):

77 The Legal Intelligencer (June 4, 1920) 421.

Action on Policy—Cause of Death—Question for Jury:

In an action on a benefit certificate insuring against death due to a fall, but not against death from disease, where there was evidence that though insured had not been in good health for years, he was in better condition at the time of the fall than for a long time prior thereto, needed no help to get out of bed, walked without assistance and never complained of his back and that after the fall he could not

get out of bed or walk without help and had constant pain in his back and that there was a bruise on the back close to the spine and a misalignment of the lumbar vertebrae, it was a question for the jury whether the death was due to the fall.

Same—Same—Evidence:

In an action on a benefit certificate where something appears that can have caused a death and other adequate cause for it is not made to appear it may be found that the cause appearing to which the death might be due was the cause of it.

[Judgment for society below. Here reversed against society.]

Cummings v. Railway Mail Assn. (Ia. S. C.):

177 Northwestern Reporter (June 4, 1920) 466.

Action on Policy—Non-Payment of Premium—Forfeiture:

In an action against a grand lodge of fraternal society on a life insurance certificate defended upon the ground that it lapsed for non-payment of premiums, where it was the local lodge's duty to collect the premiums and there was due insured from it and in the hands of its secretary sufficient money from sick benefits to have paid the premiums when due, such money was in the hands of the grand lodge through its agent and the certificate was not forfeited.

[Judgment in accordance with opinion.]

Connor v. District Grand Lodge No. 7, G. U. O. of O. F. in America, et al. (N. C. S. C.):

102 Southeastern Reporter (June 5, 1920) 881.

Action on Policy—"Good Standing"—Definition:

A member of a fraternal order was in "good standing" at the time of his death within the meaning of the certificate providing for payment in case of death while in "good standing," where he was never suspended or notified that he was in arrears or had been suspended and the records of his local council showed he was in "good standing," and it had regularly reported him as such and accounted for the amounts which should have been paid by him.

[Judgment for plaintiff below. Here affirmed against society.]

Deppe v. National Council Junior Order United American Mechanics (St. Louis C. A., Mo.):

220 Southwestern Reporter (June 9, 1920) 974.

Action on Policy—Prohibited Occupation—Waiver:

Where the by-laws of the fraternal insurer provided that no officer or local council or member could waive provisions, and that knowledge of the local officers should not be construed knowledge of the national council, in an action on a certificate evidence that the local financier who collected the assessments knew that insured was engaged in a prohibited occupation for two years before he ceased collecting his assessments would not warrant a finding that the national council had notice of the prohibited occupation.

Same—Same—Exclusion without Notice:

Though a fraternal benefit order acts at its peril in excluding a member without notice, the member cannot complain where it is shown without dispute that he was engaged in an occupation which rendered his benefit certificate void.

Fraternal Benefit Order—Void Certificate—Recovery of Premiums:

A fraternal benefit certificate being void ab initio because insured was engaged in a prohibited occupation, insured may recover the premiums paid though, as the contract was obtained by reason of insured's ignorance, inability to read or write, or a mistake or misunderstanding and not from any evil practices on his part, but not if it was obtained by his fraud.

[Judgment for plaintiff below. Here reversed in favor of society.]

Bosse v. Knights and Ladies of Security (St. Louis, C. A., Mo.):

220 Southwestern Reporter (June 9, 1920) 993.

Action on Policy—Presumption—Rebuttal:

The presumption that a man lives until the lapse of the seven year period after disappearance and against suicide can be overcome and rebutted by evidence.

Same—Death—Jury:

In an action on a life insurance certificate where insured had disappeared, the question of death of insured was for the jury.

Same—Suicide—Evidence:

In an action on a life insurance certificate where insured had disappeared, a letter from him to his children stating "when you read this line, I am no more," was inadmissible as a part of the *res gestae*, since his death was not shown.

[Judgment for plaintiff below. Here reversed in favor of society.]

Bergman v. Supreme Tent Knights of Maccabees of the World (St. Louis C. A., Mo.):

220 Southwestern Reporter (June 9, 1920) 1029.

Policy—Fraud—Rescission:

To rescind a contract of insurance for fraud the insurer must within a reasonable time after knowledge of the facts relied upon for a rescission return or offer to return the consideration and failure to do so affirms the contract.

Same—Same—Same:

Answer setting out a violation of the warranty and an avoidance of the policy must show a return or offer to return the premium within a reasonable time after the discovery of the alleged breach.

Same—Tender Back of Premiums—Reasonable Time:

In such cases a reasonable time is ordinarily a question of fact but where the facts have been ascertained or when they are undisputed or admitted, it becomes a question of law.

Same—Same—Evidence Considered:

No tender was made until more than 17 months after learning of the alleged fraud and no tender was made at any time to claimant or any person authorized to act for him, but after the beginning of the suit and after the case had been called for trial the defendant procured leave of court to admit its answer showing the payment of the amount of the premium with interest into court. *Held*, That this was not a compliance with the law. After the death of the assured a tender of the premium in avoidance of the policy should be made to the beneficiaries.

Same—Same—How Made:

A tender of money, to be sufficient, must first be offered to the party entitled to receive it, or to some one authorized to receive it for him, and, if refused, the money must then be paid into court for his use and benefit.

[Judgment for plaintiff below. Here affirmed against society.]

Grand Lodge of Brotherhood of Railroad Trainmen v. Clark (Ind. S. C.):

127 Northwestern Reporter (June 15, 1920) 280.

Federal Court—Ancillary Bill—Jurisdiction:

Certain citizens of other states on behalf of holders of a class of benefit certificates issued by an Indiana corporation brought suit against it, resulting in a decree for the corporation. A subsequent suit by the corporation against Indiana citizens holding such certificates to restrain actions by them involving the same question was not an ancillary bill, being an original by the citizens of the State of Indiana, of which the Federal Court had no jurisdiction.

[Society's bill dismissed.]

Supreme Tribe of Ben Hur v. Cauble et al. (U. S. D. C.):

264 Federal Reporter (June 17, 1920) 247.

Payment of Assessment by Third Person—Proceeds—Lien:

Voluntary payment by third person of assessments in arrears which under the by-laws of the society reinstated members of insured, gave such third person no title to the insurance. Had the payment not been voluntary it could have been given such third person no more than a lien upon the insurance money upon the death of insured.

Fraternal Benefit Order—Beneficiary—Vested Interest:

A beneficiary in a certificate of insurance issued by a fraternal benefit order in 1898, acquired a vested interest therein on delivery of the certificate to her, that could not be effected by any effort of insured to change beneficiary, as that section of New York insurance law permitting an insured to change beneficiaries could not impair a contract made prior to its passage.

[Judgment for original beneficiary.]

Lyons v. Lyons et al. (N. Y., App. Div.):

182 New York Supplement (June 21, 1920) 212.

Action on Policy—"Accidental Means"—Over Exertion:

Over exertion is not an accidental means of death within policy of accident insurance.

Same—Same—Same:

Where insured who was apparently in good health but was suffering from tuberculosis, sustained a hemorrhage while swimming against a strong current and death occurred within a month as the result of violent and successive hemorrhages, such death did not result from accidental means within a fraternal benefit certificate insuring against death from injuries received through accidental means.

[Judgment for plaintiff below. Here reversed in favor of society.]

Olinsky v. Railway Mail Assn. (Cal. S. C.):

189 Pacific Reporter (June 21, 1920) 835.

Fraternal Benefit Order—Contract:

The application, rules, and by-laws as well as the benefit certificate itself, constitute the insurance contract with a fraternal order.

Same—Same—Application:

The clause in an application to a benefit society for insurance exempting it from liability in event insured died from smallpox because of the fact that he had not been successfully vaccinated is valid and binding.

Same—Cause of Death—Jury:

In an action on a benefit certificate exempting the society from liability for death from smallpox, the question of cause of death was for the jury, though the proof of death stated that insured died of smallpox.

[Judgment for plaintiff below. Here affirmed against society.]

West v. National Council Knights and Ladies of Security (Springfield C. A., Mo.):

221 Southwestern Reporter (June 28, 1920) 391.

Annotation: Waiver of Provision in Contract of Mutual Benefit Association against Reception or Initiation of Applicant While Ill:

Under the above heading appears an annotation to the case of *Independent Order of Foresters v. Cunningham*, reported in 156 Southwestern Reporter 192; 5 American Law Reports 1569.

Annotation: Waiver of Provision of Insurance Contract as to Habits of Insured by Subordinate Lodge of Benefit Society:

Under the above heading appears an annotation to the case of *National Council of Knights and Ladies of Security v. Fowler* reported in 168 Pacific 914; 6 American Law Reports 591.

Annotation: Waiver of Proof of Death or Injury by Subordinate Lodge of Mutual Benefit Society:

Under the above heading an annotation to the case of

Love v. Modern Woodmen of America, reported in 102 North-eastern Reporter 183; 6 American Law Reports 531.

Action on Policy—Proof—Evidence:

Proof of the issuance of the certificate of insurance and death establishes a prima facie case in favor of beneficiary.

Same—Proof of Death—Conclusiveness:

Where the beneficiaries under benefit certificate were not present at the time of the assured's death and the proofs of death were prepared by officers of the local camp and the beneficiaries did not know at the time they made the affidavits how the assured came to his death but were acting upon the suggestion and advice of the local officer, such proofs of death were not conclusive against the beneficiaries as to the cause of death.

[Judgment for society below. Here reversed against society.]

Williams et al. v. Modern Woodmen of America (St. Louis C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 414.

Fraternal Benefit Order—Change of Beneficiary—Mental Capacity:

The mere fact that insured was nearly 80 years of age, that he would forget the names of acquaintances; that he wore summer clothes in the winter time and winter clothes in the summer time and was eccentric and odd in his manner and demeanor, was not sufficient evidence of mental incapacity as to render him incapable of changing the beneficiary in his insurance policy.

[Judgment in accordance with opinion.]

Meyer v. Laffin (St. Louis C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 395.

Action on Policy—Health—Waiver:

Where at the time of insured's application for insurance, insurer's medical examiner was advised of an operation for appendicitis performed upon insured and he knew the circumstances thereof and nevertheless recommended her as a first class risk, there was a waiver by insurer of any right to show that insured was not a safe risk because of such operation.

[Judgment for plaintiff below. Here affirmed against society.]

Knights and Ladies of Security v. Shepherd (Tex. C. A.):

221 Southwestern Reporter (June 23, 1920) 696.

Fraternal Benefit Order—Change of Beneficiary—Fraud:

Where the insured under a benefit certificate transferred the certificate from his sons to his sister who undertook to care for him during what proved his last illness, it was *Held*, That under the circumstances and as up to the time of his death the insured had the right to change the beneficiary, there could be no finding that such change was induced by fraud or undue influence.

[Judgment in accordance with opinion.]

Brotherhood of Railroad Trainmen v. Van Etten (N. J. C. of Err. & App.):

110 Atlantic Reporter (June 24, 1920) 121.

Fraternal Certificate—"Insurance Policy"—Definition:

The certificate of membership in a beneficial society is not an "insurance policy" within Pennsylvania Act making a policy complete without application and laws of the society referred to therein, but not attached thereto.

Fraternal Order—Assumption of Obligation by Corporation:

A corporation that assumes the obligation of a beneficial association stands in the same position as the society, succeeds to its rights and privileges and becomes liable on society's certificate only to the same extent as the society was liable.

[Judgment for plaintiff below. Here reversed in favor of company.]

Porter v. Commonwealth Casualty Co. (Pa. S. C.):

110 Atlantic Reporter (June 24, 1920) 153.

Fraternal Benefit Order—Laws—Construction:

The laws of a benefit association are to be construed most favorably to the members when their rights as holders of benefit certificates are affected.

Same—Same—Same:

The constitution and by-laws of the benefit association interpreted and *Held* to give the members the right to appeal from the Supreme Council from a decision dissolving a subordinate council.

[Judgment in accordance with opinion.]

Tucker v. Kirkpatrick (Kan. S. C.):

139 Pacific Reporter (June 28, 1920) 946.

Action on Policy—Intoxicants—Warranty:

Where a fraternal benefit certificate was reissued to include an additional beneficiary and contained a statement reaffirming the original application, answers and warranties, such certificate did not lapse because at the time of the reissuance insured had become addicted to the use of intoxicating liquor, as the warranty in the last certificate referred to the original contract.

Same—Same—Recovery:

In an action on a fraternal benefit certificate where the society's constitution provided for forfeiture if insured became so intemperate in the use of liquor as to impair his health, judgment in favor of plaintiff was not erroneous where there was no testimony showing the use of intoxicants by insured to an extent which would impair his health.

Same—Coroner's Verdict—Evidence:

There is a presumption against suicide and this presumption arises even when it is shown by proof that death was self inflicted as it is presumed to be accidental until the contrary is made to appear.

[Judgment for plaintiff below. Here affirmed against society.]

Eminent Household of Columbian Woodmen v. Matlock (Ark. S. C.):

221 Southwestern Reporter (June 30, 1920) 858.

Fraternal Benefit Order—Certificate—Delivery:

Where applications for readmission and for insurance were accepted by the society and where applicant was accepted as a member and paid the money entitling him to the issuance of a benefit certificate, the insurance went into effect upon his admission and payment of the dues for the current month notwithstanding the certificate had not been issued or delivered, as there was nothing in the constitution or application for readmission making the delivery of the certificate a condition to the taking effect of insurance and since such insurance contract is not required to be in writing.

Same—Readmission—Agency:

The local lodge and its officers are agents of the Grand Lodge in the reception and readmission of members.

Same—Same—Same:

An applicant for readmission in a fraternal order was justified in relying upon the construction placed upon an ambiguous provision of the constitution by the officer of the subordinate lodge under whose direction he was proceeding in gaining readmission to the Grand Lodge.

[Judgment for plaintiff below. Here affirmed against society.]
Brotherhood of Railroad Trainmen v. Cook (Tex. C. C. A.):

221 Southwestern Reporter (June 30, 1920) 1049.

Fraternal Benefit Order—By-Laws—Suspension:

Under the by-laws of a fraternal benefit society providing for the suspension of members on conviction or ipso facto for non-payment of dues and assessments, a formal suspension required a conviction and a mere letter from the society to the member stating that he had been suspended was insufficient.

Same—Suspension—Assessment:

Where a member insured under a certificate in a fraternal benefit order tendered his monthly dues and the tender was refused by the society on the ground of an alleged suspension, such member did not necessarily forfeit his rights by omitting to pay further monthly dues unless it was his intention to acquiesce in his status as suspended, or his conduct was such as to lead the society so to believe.

Same—Same—Remedy:

In regard to a member's duty to first exhaust his remedy under the rules of a fraternal benefit order before resorting to the courts, reinstatement to full membership to the society conditioned on proof of unimpaired health and other conditions, is not an adequate remedy for a member who without suspension as required by the society's by-laws is denied the status and privileges of a member.

[Judgment for plaintiff below. Here affirmed against society.]
Labrecque v. Catholic Order of Foresters (Me. S. J. C.):

100 Atlantic Reporter (July 1, 1920) 194.

Fraternal Benefit Order—Increase of Rates—Legality:

A fraternal society issued a life insurance policy to insured in 1885 which was renewed in 1910. Subsequently and while the policy was in force, a "Supreme Statute" was adopted at a convention of the Supreme Lodge that by its terms became effective January 1, 1911 and which provided that "the right to change, increase or adjust the schedule of rates" thereafter to be paid by policyholders "is expressly reserved to the Supreme Lodge." Thereupon the schedule of rates was materially increased by the Supreme Lodge convention, the members of that body being in part composed of persons other than delegates who were voted for or elected by members holding policies in the insurance department. In an action on the policy it was *Held*. That the body assuming to change the schedule of rates did not constitute a "representative form of government" within the meaning of Neb. Laws 1897 at the time the rates were increased and that such increase was therefore unlawful and void.

Same—By-Laws—Forfeiture:

The constitution and by-laws of fraternal society will be strictly construed against the society where a forfeiture is sought to be imposed thereunder.

Same—Illegal Increase of Dues—Forfeiture:

A fraternal benefit policy of life insurance cannot be forfeited for insured's failure to pay increased dues where such increase was unlawful and void.

[Judgment for society below. Here reversed against society.]

Meyer v. Supreme Lodge Knights of Pythias. (Neb. S. C.):

177 Northwestern Reporter (July 2, 1920) 828.

Application—Misrepresentation—Forfeiture:

Where the evidence showed that the insured for several years before his death, which occurred on the day following the receipt of the policy, was a sufferer from attacks of indigestion some of which were of such severity as to make him apprehensive for his life, contrary to his statements in his application, there could be no recovery.

Action on Policy—Evidence—Usual Practice of Companies:

Evidence offered by the defendant tending to show that according to the usual course of life insurance business, the application would not have been accepted or the policy issued if the truth had been stated, should have been admitted.

[Judgment for plaintiff below. Here reversed in favor of defendant.]

Sovereign Camp Woodmen of the World v. Thomas (Ky. C. A.):

222 Southwestern Reporter (July 14, 1920) 69.

Mutual Benefit Society—Non-Payment of Dues—Forfeiture—Reinstatement:

Where the insured did not pay his endowment tax on the first day of the quarter, as the laws of the society re-

quired, he ceased to be in good standing; his payment of the tax at a subsequent time was ineffective to reinstate him where the laws of the society further provided that if the member was not in good health at the time of payment of any delinquency, the payment would not operate to reinstate him.

[Judgment for society below. Here affirmed in favor of society.]

Gilmore v. Grand Temple & Tabernacle etc. (Tex. C. C. A.):

222 Southwestern Reporter (July 14, 1920) 294.

Mutual Benefit Society—Assessments—Waiver:

A beneficial association which has accepted twenty premiums from a beneficiary after the date fixed for payment, although a by-law provides "that all benefits in this Association shall cease when a member defaults in the payment of his dues," waives its right to insist upon this by-law and is liable for the benefit on tender of an over-due premium after the death of such beneficiary. *Lantz v. Vermont Life Ins. Co.*, 139 Pa. 546, distinguished.

[Judgment against society.]

Kurtz v. Clergyman's Cooperative Beneficial Assn. (Lancaster City C. P.):

37 Lancaster Law Review (July 16, 1920) 193.

Mutual Benefit Society—Change of Beneficiaries—Equity:

Where the constitution, by-laws, or regulations of a fraternal order, which issues benefit certificates, providing for the payment of death benefits at the death of the member, prescribes the acts to be done at the will of and by the insured to effect a change of beneficiary, and the insured has done some of the acts to effect such change, but dies before the change is fully completed, and it is equitable to regard all he should have done to complete the change of beneficiary as done, a court of equity will so regard it, and give effect to his intention to change the beneficiary, notwithstanding the acts done by the insured were not a full compliance with the requirements of the constitution, by-laws, etc.

[Judgment for new beneficiary below. Here affirmed.]

Taylor v. Grand Lodge A. O. U. W. of North Dakota et al. (N. D. S. C.):

178 Northwestern Reporter (July 16, 1920) 130.

Mutual Benefit Society—Payment to Wrong Person—Liability for Further Payment:

A beneficial society is liable to a beneficiary for an undisputed amount of death benefits, notwithstanding that a check for the amount, payable to the beneficiary, had been sent by its supreme office to the local branch to which the insured belonged, where it appears that the check was paid by a bank to one whom the agent of the local branch fraudulently represented to be the payee.

[Judgment for plaintiff.]

Zima v. Woodmen of the World (Lackawana Co. C. P.):

68 Pittsburgh Legal Journal (July 17, 1920) 464.

Action on Policy—Death—How Proved:

In a suit on an insurance policy, the death of the insured may be established, as any other fact, by direct proof or circumstantial evidence, and after the expiration of seven years, the presumption of the death of the party will arise from an unexplained absence without information concerning him.

Same—Disappearance—Death:

The evidence showed that the insured was a man of a happy disposition. His domestic relations were pleasant. He was fond of wife and children and devoted to home. He left home as usual for work on October 20, 1910. He had \$700.00 on his person. He had 24 Mexicans under his authority as yard master. After leaving home he was never heard from again. *Held*, That under these facts, the presumption that he died shortly after leaving his home is irresistible, and the court was justified in finding that death occurred before lapse of the policy in April, 1913.

Same—Same—By-laws:

The laws of the society that absence or disappearance for any length of time shall not be sufficient evidence of death were invalid.

Same—Same—Limitation of Action:

The statute of limitation, under the facts of this case, did not begin to run until the expiration of 7 years from the time of the disappearance.

Same—Same—Sufficiency of Complaint:

After alleging the disappearance of the insured, it was further alleged that it was impossible to make any other proof of the death except that arising out of the presumption of death from 7 years absence; that the insured was in good standing at the time of death; and that demand for payment had been made and the same denied because of the by-laws which provided that disappearance should be no evidence of death. *Held*, That the petition stated a good cause of action.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp Woodmen of the World v. Piper (Tex. C. C. A.):

222 Southwestern Reporter (July 21, 1920) 649.

Action on Policy—Pleading—Statute:

It was alleged by the defendant in its answer that the insured was beyond the age limit of 60 years, contrary to his warranty in his application. *Held*, That it was unnecessary to file a reply to this paragraph of answer, under Sec. 6108 Tribby's Digest of Arkansas, which requires reply only where the allegations in the answer are in the nature of a counter-claim or set off.

Same—Breach of Warranty—Evidence:

It was incumbent upon the society to introduce in evidence, the constitution, by-laws and application containing

the provision relied upon. Not having done so, there was no evidence upon which to send the issue to the jury as to whether the answer to the query as to age constituted a warranty.

[Judgment for plaintiff below. Here affirmed against society.]

Home Protective Association v. Morse (Ark. S. C.):
222 Southwestern Reporter (July 21, 1920) 364.

Action on Policy—Violation of Law—Instruction:

The defense was made that the insured came to his death in consequence of the violation of the laws of the state, while making an assault upon another. The jury was instructed that if they were unable to make either an affirmative or negative finding upon the issue of whether or not the insured on the occasion of his death had made or attempted to make an unlawful assault upon the person who killed him, then they should find for the plaintiff. *Held*, That the instruction was erroneous in that it warranted a verdict for the plaintiff without requiring a finding upon the defense at issue. It did more than to place upon the association the burden of proof upon the issue.

[Judgment for plaintiff below. Affirmed on appeal to C. C. A. Here reversed in favor of society.]

Sovereign Camp Woodmen of the World v. Bailey (Tex. C. A.):

222 Southwestern Reporter (July 21, 1920) 550.

Mutual Benefit Society—Beneficiary—"Dependent":

The word "dependents" as used in the laws of Maryland relating to fraternal benefit associations, does not imply that the beneficiaries shall be legally or wholly dependent upon insured. If the beneficiary is dependent upon insured for substantial and material support under circumstances rendering such support lawful and proper, she is clearly within the term "dependents".

Same—Same—Same:

The insured's sister-in-law, who kept house for him after his wife died under an arrangement whereby the insured contributed substantially, although not entirely, to her support and the support of her mother was sufficiently qualified as a "dependent."

[Decree for sister-in-law below. Here affirmed.]

Hunt et al. v. Winkelman (Md. C. A.):

110 Atlantic Reporter (July 22, 1920) 490.

Mutual Benefit Society—Dissolution—Disposition of Funds:

A provision in the charter of a subordinate organization of a fraternal beneficiary society that in case of dissolution or forfeiture of charter "all property, money, books, and papers shall become the property" of the superior body will not be held to work a forfeiture of a fund raised by the subordinate organization for the conduct of its local work, known as the "general fund," or of property purchased with

such fund for purely local advantage, where the by-laws of the superior body provide that in the event of suspension or dissolution it shall be the duty of the subordinate organization to deliver to a named officer of the superior body "all its funds, except its library, furniture, and general fund." The by-laws in such case will be construed as interpretative of the provision in the charter.

[Judgment for subordinate lodge below. Here affirmed against Grand Lodge.]

Grand Lodge A. O. U. W. of Nebraska v. Ancient Order of United Workmen Temple Assn. et al. (Neb. S. C.):

178 Northwestern Reporter (July 23, 1920) 221.

Mutual Benefit Society—Assessments—Application of Overpayments:

Insured engaged in the saloon business in July, 1915, and from such date until January 1, 1916, when he received a permit from the society to engage in such business, he paid double monthly dues. Under the rules of the society, he was required to pay such double dues only from the time the permit was granted him. The result was that he overpaid for a period of six months. The society claimed that there could be no recovery because of default in payment of dues for March, 1916. *Held*, That the overpayments during the time the insured had no permit to engage in the saloon business did not operate to prevent a forfeiture of the contract. Having received the overpayments before issuance of a permit and the double payments being payable only from the time of the granting of the permit, the society was obliged to apply the overpayments to prevent forfeiture on insured's failure to pay the March dues.

Same—Same—Waiver:

After insured was notified of his suspension, dues were tendered until the plaintiff was informed by the society that her husband was no longer a member of it. *Held*, That from that time she was under no duty to tender further dues.

[Judgment for plaintiff below. Here affirmed against society.]

Clune v. Catholic Order of Foresters (Wis. S. C.):

178 Northwestern Reporter (July 23, 1920) 243.

Mutual Benefit Society—Incorporation—Statute:

A charter for a mutual benefit society which is to be subordinated lodges, can only be granted under the Act of April 6, 1893, (P. L. 10) and not under the Corporation Act of 1874.

[Judgment in accordance with opinion.]

In re. Catholic Popular Union (Allegeheny Co. C. P.):

68 Pittsburgh Legal Journal (July 24, 1920) 471.

Mutual Benefit Society—Occupation—Forfeiture:

The provision of the laws of a mutual benefit society suspending a member for engagement in a hazardous occupa-

tion without notice and without payment of increased dues is self-executing.

Same—Same—Incontestable Clause:

The laws of the society provided that "when a beneficiary certificate has been in force for five consecutive years immediately preceding the death, while in good standing, of the member holding the same, the payment thereof shall not be contested." *Held*, That this clause was of no avail to plaintiff where the insured became automatically suspended by reason of engagement in an extra hazardous occupation without having notified the society and paid the increased dues.

Same—Same—"Mine":

The word "mine" within the laws of the society relating to occupation, is used in its primary and restricted sense and denotes an underground excavation. It would not apply to the mining of bauxite, which is mined by open workings like the quarrying of stone.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp Woodmen of the World v. Arthur (Ark. S. C.):

222 Southwestern Reporter (July 28, 1920) 729.

Mutual Benefit Society—Non-Payment of Dues—Waiver:

The laws of the society provided: "A member refusing or neglecting to pay his dues six months in advance in full is not in good standing 60 days after the first day of the semi-annual period for which the amount is due." *Held*, That the society did not waive forfeiture by retaining, after the insured became delinquent under the above provision, a small amount previously overpaid by the insured nor would the society be estopped from claiming forfeiture.

Same—Same—Same:

Letters written by the society to the insured after his death advising him of his delinquency and soliciting his application for reinstatement without knowledge of the death, was not evidence of waiver of forfeiture.

[Judgment for defendant below. Here affirmed in favor of defendant.]

Moses v. Rawlins (St. Louis C. A.):

222 Southwestern Reporter (July 28, 1920) 865.

Action on Policy—Payment of Assessment—Question for Jury:

There was testimony by several witnesses that they had seen the receipt for certain dues alleged to have been delinquent at the time of insured's death. There was also evidence tending to show that the local collector was inexperienced in keeping accounts and that her records were loosely kept. The payment of the dues in question was denied by the society. *Held*, That whether or not the dues were paid was for the jury.

Same—Same—Evidence:

Testimony to the effect that the insured's husband had sent her a check for \$50.00 and had insisted that the dues in question be paid, admitted over the objection of the society, was reversible error notwithstanding the admonishment of the court that it would be no evidence of the fact of payment.

[Judgment for plaintiffs below. Here reversed in favor of company.]

Royal Neighbors of America v. McCullar et al. (Ark. S. C.):

222 Southwestern Reporter (July 28, 1920) 708.

Action on Policy—Notice—Pleading:

Not having pleaded failure to give notice of death of the insured, it will be presumed that such notice was given.

Same—Same—Waiver:

Denial of all liability beyond the amount paid to the company was a waiver of any failure to give notice.

Same—Tender—Pleading:

The only purpose of pleading being to notify the opposing party of what is expected to be proved and plaintiff having been tendered, through her attorney, more than three months before suit was brought the full amount the company had received and liability for which is admitted, no plea of tender was necessary.

Same—Suicide—Pleading:

The averment that the insured "died by his own hand" was equivalent to the allegation that he intentionally took his own life.

Same—Same—Insanity:

Where the policy exempts liability "if the insured dies by his own hand, sane or insane" there can be no recovery regardless of the fact that the insured's mind may have been so impaired that he was not morally responsible for the act of taking his own life.

Same—Same—Pleading:

Pleading of the company denying liability for the face of the policy and admitting liability for payment of what it had received from the insured after setting up the provision of the policy fixing the liability in event of suicide was good as against a general demurrer.

Same—Judgment—Costs:

Although the plaintiff did not pray in the alternative for judgment of the amount tendered into court, but in the motion for new trial alleged error in not rendering in her favor for that amount, the judgment should have been so rendered, the defendant having admitted liability for that amount.

However, as plaintiff made no prayer for the amount and refused it when tendered the costs should go against her.

[Judgment for defendant below. Reversed on appeal to C. C. A. (192 Southwestern Reporter 607.) Here reversed in favor of association.]

Illinois Bankers Life Assn. v. Floyd. (Tex. Comm. App.):
222 Southwestern Reporter (July 28, 1920) 968.

Principal and Agent—Evidence Considered:

Where a principal admits the agency of one who executes a promissory demand note, and signs his and the principal's name thereon, and in such a way that the relation of principal and agent appears upon the face of the note, the note being given to a bank for a loan, and the money is advanced thereon, and paid over by the agent to the principal, and the principal thereafter denies the authority of the agent to thus execute the note, such principal is in no position to claim the right to retain the money it received upon the note, while denying liability thereon. It cannot disaffirm the authority of the agent to make the contract, and at the same time retain the benefit of his unauthorized act.

[Judgment for society below. Here reversed in favor of bank.]

Brotherhood of American Yeomen v. Farmers Equity
State Bank of Mandan (S. D. S. C.):

178 Northwestern Reporter (July 30, 1920) 285.

Action on Policy—Good Health—Evidence:

Where the question of the insured's state of health at the time of reinstatement was in issue, open evidence of a physician as to his health at such time was not conclusive; the question was for the jury.

Same—Same—Same:

All papers pertaining to the insured's reinstatement as well as the advice given him by an officer of a local camp of his reinstatement, each indicating a contributory step in the process of his reinstatement, were properly received in evidence.

Same—Same—Same:

The certificate of the camp physician attesting the insured's good health after a physical examination was admissible in evidence, such certificate being required by the by-laws of the society.

Same—Same—Same:

There was no error in sustaining an objection to the question: "State whether or not you told him (the insured) what was the matter with him," which question was propounded to a physician who had professionally served the insured.

Same—Same—Same:

Whether a brother of insured was suffering with tuberculosis at or about the time of insured's reinstatement was not

admissible to prove what disease, if any, insured had at the time of reinstatement.

[Judgment for plaintiffs below. Here affirmed against society.]

Sovereign Camp of Woodmen of the World v. Keefe et al. (Ala. S. C.):

84 Southern Reporter (July 31, 1920) 810.

Mutual Benefit Society—Non-Payment of Dues—Waiver:

The acceptance of delinquent dues by an officer of a subordinate lodge did not estop the society from asserting forfeiture where the loss of the society required delinquent members to comply with certain obligations for reinstatement, and prohibited any local lodge or officer from waiving any forfeiture.

[Judgment for society below. Here affirmed in favor of society.]

Barganier v. Knights of the Macabbees of the World (La. S. C.):

85 Southern Reporter (August 21, 1920) 57.

Mutual Benefit Certificate—Beneficiaries—Will:

The member revoked a prior designation of beneficiary and made the certificate payable to his estate. The laws of the society provided that benefits might be made payable to "such person as may be designated by the member in his or her last will." The law of the state regulating mutual benefit societies limits the payment of benefits to persons related to the member in stated degrees. The member made a will bequeathing the remainder of his estate to certain named relatives, all of whom were within the classes specified by the statute. All of the beneficiaries under the will relinquished their rights in the certificate here involved to the plaintiff, who was a sister of the member and who was one of the beneficiaries under his will. *Held*, That the sister was entitled to the proceeds of the certificate.

[Judgment for society below. Here reversed against society.]

Anderson et al. v. Grand Lodge United Brothers of Friendship of the State of Texas (Tex. C. C. A.):

223 Southwestern Reporter (August 25, 1920) 237.

Mutual Benefit Certificate—Incontestability—Statute:

Article 4741 R. S. Texas, requiring policies to contain an incontestable clause, does not apply to fraternal benefit societies.

Same—Occupation—Forfeiture:

The laws of the society required a notice of 30 days when the insured engages in any of the hazardous occupations named in the laws and the payment of an extra assessment. The society received no notice of the insured for three months after he had entered a more hazardous occupation. When this notice was received, the policy had already been forfeited by the failure to give notice and pay the increased assessment. *Held*, That by engaging in such extra hazardous employment and failing to pay the increased rate and

give notice as the laws required, terminated the insurance, and the fact that the local collector had accepted certain payments after having heard a rumor that the insured was going into the other employment did not estop the society from claiming forfeiture, the by-laws denying to him the power of waiving any forfeiture.

Same—By-Laws—Notice:

A member of a mutual benefit society is charged with knowledge of his own violation of the laws of the society.

[Judgment for plaintiff below. Here reversed in favor of society.]

Sovereign Camp Woodmen of the World v. Nigh (Tex. C. C. A.):

223 Southwestern Reporter (August 25, 1920) 291.

Mutual Benefit Society—Agency—Assessment:

An officer of a subordinate lodge of a benevolent fraternal insurance order having authority, under its by-laws, to collect and receive dues and assessments from its members, is the agent of the grand body of which the subordinate lodge is a part within the scope of his authority.

Same—Negligence of Agent:

The acts, omissions, and mistakes of such an officer within the scope of his authority are the acts, omissions, and mistakes of the grand body with which the subordinate lodge of which he is an officer is affiliated.

Same—Assessments—Estoppel:

Where an officer of such a subordinate lodge, having authority to collect and receive dues, receives, receipts for, and retains without objection a sum of money from a member in payment of an assessment in the bona fide, but mistaken, belief on the part of both the member and the officer that the sum so received was sufficient to pay the assessment in full, the grand body has waived any right of forfeiture for non-payment of the assessment, and is estopped to assert it, even though the amount so received was insufficient to pay the assessment in full.

[Judgment for plaintiff below. Here modified and affirmed against society.]

Warren v. Grand Lodge A. O. U. W. of Nebraska (Neb. S. C.):

178 Northwestern Reporter (August 27, 1920) 627.

Premiums—Tender—Evidence Considered:

In assumpsit on a benefit certificate a verdict was directed in favor of the defendant where the beneficiary's deceased husband, being in default of his monthly dues, it was sought to prove that when her husband in her presence had told the collector that he had the money to pay what was due, but that the collector had suggested taking out a new policy and the two had discussed other terms to be accepted or refused at a later date, and nothing more had been done in the matter prior to the insured's death, this could not be adjudged

a tender so that the case could not be allowed to go to the jury.

[Judgment for society.]

Barnedollar v. Supreme Council of the Royal Arcanum (Allegheny Co. C. P.):

68 Pittsburgh Legal Journal (August 28, 1920) 555.

Beneficiary—Divorce—Distribution:

That insured wife's obtained a divorce from him did not deprive her of the proceeds of his benefit certificate upon his death.

Same—Same—Same:

The wife having an insurable interest at the time the certificate was made payable to her and being entitled under the law to be named as beneficiary, that status remained to her thereafter and was not revoked by divorce.

Same—Statute—Construction:

Sec. 6059—211, Rem. Code Wash. 1915, provides that "The payment of death benefits shall be confined to wife," etc. *Held*, That the statute was not retroactive and would not nullify or change in any way any contracts previously made.

Same—Divorce—Estoppel:

Where the local officer of the society notified the divorced wife that it was unnecessary to change the certificate so as to make it payable to a grandson and advised her to keep on paying premiums, which she did, the society was estopped from insisting that the above statute would deprive her of the rights to the benefits because of the divorce.

Policy—Limitation of Action:

The limitation of time within which action could be brought does not apply to a case where the beneficiary had no knowledge of the member's death.

[Judgment for plaintiff below. Here affirmed against society.]

Teed v. Brotherhood of American Yeoman (Wash. S. C.):

190 Pacific Reporter (August 30, 1920) 1005.

Mutual Benefit Certificate—Beneficiaries—Son-in-Law:

The surviving husband of a deceased daughter is not a "son-in-law" within the statute relating to beneficiaries.

Same—Same—Dependent:

That the insured lived in the home of her son-in-law and looked after his household affairs and saw that his meals were prepared and did many other acts of favor for him, did not constitute him a dependent, she being neither under legal nor moral obligation to do so.

Same—Same—Assessments—Recovery:

One who has been improperly designated as a beneficiary of a mutual benefit certificate is entitled to an equitable lien on the proceeds of such certificate for assessments paid by him.

Same—Exemptions—Statute Construed:

The statute exempting the proceeds of a mutual benefit certificate from attachment, etc., would not prevent equity from granting an equitable lien as against the proceeds to cover the amounts of premiums paid by one improperly designated as beneficiary.

[Judgment in accordance with opinion.]

Allen et al. v. Cunningham et al. (Tenn. S. C.):

223 Southwestern Reporter (September 1, 1920) 450.

Action on Policy—Misrepresentation—Question for Jury:

Where the evidence conflicted on the question of whether or not the insured had made misrepresentations in his application, the question was for the sole determination of the jury.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign W. O. W. v. Bass et al. (Ala. S. C.):

85 Southern Reporter (September 4, 1920) 273.

Fraternal Benefit Order—By-Law—Statute:

The amendment of a by-law by a fraternal benefit society to conform to a statute, did not violate its certificate prohibiting change.

[Judgment for plaintiff below. Here modified by reducing the amount of judgment.]

Williams v. American Insurance Union (Kan. S. C.):

191 Pacific Reporter (September 6, 1920) 291.

Unincorporated Association—Practice—Assumpsit:

An action of assumpsit cannot be maintained against an unincorporated beneficial society by the widow and beneficiary of a member for death benefits.

[Judgment in accordance with opinion.]

Gottselig v. Cigar Makers International Union of America No. 257 et al. (C. P., Lancaster Co., Pa.):

37 Lancaster Law Review (September 10, 1920) 244.

Fraternal Benefit Order—By-Laws Subsequent to Issuance of Certificate:

By-laws of fraternal society after issuance of certificate must be reasonable to bind a member; though his certificate provides that the member shall be bound by the by-laws as they then exist or may be thereafter modified or enacted.

Same—Same:

A by-law of a fraternal society after issuance of certificate to member providing that disappearance or long continued absence of a member unheard of, shall not be regarded as evidence of death, etc., was not binding on such assured member.

Same—Proof of Loss—Estoppel:

Where a member of a fraternal society disappeared and the beneficiary depended on such disappearance as a presumption of death, the society is estopped from claiming the

proofs of loss were not sufficient where it took the position it was not liable until actual death was shown or payments paid for term of expectancy.

[Judgment for plaintiff below. Here affirmed against society.]

Garrison v. Modern Woodmen of America (Neb. S. C.):

178 Northwestern Reporter (September 10, 1920) 842.

Unincorporated Associations—Parties—Pleading:

A complaint originally filed against an unincorporated association which could not be sued as such could be amended by making the members of such association defendants to the action.

Action on Policy—Payment—Evidence:

In an action on a fraternal death certificate, evidence of payment of the entire proceeds of the certificate to another person was inadmissible, plaintiff not being affected by a transfer to which she was not a party.

Same—Change of Beneficiary—Instruction:

In an action on a fraternal death benefit certificate by plaintiff, claiming to have been made beneficiary of one-half of the proceeds of the certificate by notice of change of beneficiary, an instruction that notice of change of beneficiary given a particular officer of the society was notice to the society itself was not erroneous.

[Judgment for plaintiff below. Here affirmed against society.]

Grand Lodge of Ala. A. F. A. M. (colored) v. Goodwin (Ala. S. C.):

85 Southern Reporter (September 11, 1920) 553.

Fraternal Benefit Order—Death of Beneficiary—Insurance Proceeds:

Where a member of a fraternal benefit society died prior to the beneficiary, the executors of the beneficiary were entitled to the proceeds of the fraternal certificate, although the beneficiary had devised all her personal property to her daughter.

[Judgment in accordance with opinion.]

Modern Order of Praetorians v. Merriman (Ala. S. C.):

85 Southern Reporter (September 11, 1920) 473.

Action on Policy—Death while Resisting Arrest—Evidence:

In an action on a death benefit certificate following insured's death at hands of deputy sheriff who sought to arrest him evidence as to what occurred between deputy sheriff and insured on previous occasion when deputy sheriff arrested insured and as to whether or not insured at that time was armed was not admissible as the right of the deputy sheriff to carry arms in arresting insured was not an issue in the case.

[Judgment for plaintiff below. Here affirmed against society.]

Eminent Household of Columbian Woodmen v. Blackerby (Ala. S. C.):

85 Southern Reporter (September 11, 1920) 528.

Fraternal Benefit Order—Misrepresentations—Statute:

Provision of Kansas Statute as to "misrepresentation made in obtaining or securing a policy of insurance on the life of any person," etc., does not apply to certificates issued by fraternal benefit societies.

Application—Misrepresentation—Forfeiture:

Questions asked upon an application for beneficiary certificate as to applicant's treatment for certain named diseases and whether he had consulted or been treated by a physician for any disease or injury during the preceding five years are material, and false answers to such questions will operate to annul the certificate.

[Judgment for plaintiff below. Here reversed in favor of society.]

Hiatt v. Sovereign Camp W. O. W. (Kan. S. C.):

191 Pacific Reporter (September 13, 1920) 472.

Fraternal Benefit Order—Misrepresentation—Statute:

Provision of Kansas Statute as to "misrepresentation made in obtaining or securing a policy of insurance on the life of any person," etc., does not apply to certificates issued by fraternal benefit societies.

Application—Misrepresentation—Forfeiture:

Questions asked upon an application for a beneficiary certificate as to whether or not the applicant had consulted or been attended by a physician for certain named times are material and false answers given by applicant operate to annul certificate.

[Judgment for plaintiff below. Here reversed in favor of society.]

Glasgow v. Sovereign Camp W. O. W. (Kan. S. C.):

191 Pacific Reporter (September 13, 1920) 470.

Action on Certificate—Evidence:

Introduction of evidence by plaintiff widow of deceased husband's beneficiary certificate in the defendant society, together with proof that she was her husband's widow and the designated beneficiary in the certificate with proof of demand for payment of the amount stipulated in the certificate and of the defendant society's refusal to pay, made a prima facie case for plaintiff.

Same—Non-Payment of Premium—Burden of Proof:

The forfeiture of the fraternal benefit certificate for non-payment of premiums was an affirmative defense and the burden to prove failure to pay premiums was upon society.

Same—Same—Evidence:

An admission of the scribe of the defendant society that he collected \$15.00 of deceased member on a private obligation of member in reimbursement of assessments and dues advanced was held not conclusive on jury in an action by the member's widow that payment was on such private obligation and not an advance payment of assessments and dues.

Same—Same—Jury:

Whether deceased member had defaulted in payment of assessments was question for the jury.

Same—Premium—Payment:

A wife, as beneficiary under her husband's fraternal benefit certificate so long as the contract was in force, and in the absence of any rule to the contrary, had the right to pay the assessments and dues.

Same—Agency—Evidence—By-Laws:

The duties of a scribe of a society determined whether or not he was its agent and not by the by-laws of the society to the effect that he was to be considered the agent of the insured.

Same—Payment of Premium—Estoppel:

The statement of the scribe of defendant society in response to demand of beneficiary wife of the member for receipt for payment of assessments, whether paid in advance or repaid to scribe after payment by him, that insured was paid up a year in advance may afford a basis for estopping the society from denying advance payment, such statement having been prior to suspension of member or forfeiture of insurance.

[Judgment for plaintiff below. Here affirmed against society.]
Hanheide v. Supreme Tribe of Ben Hur (St. Louis C. A., Mo.):

223 Southwestern Reporter (September 15, 1920) 684.

Action on Certificate—"Dependency"—Definition:

Under the requirements as to dependency of a beneficiary of benefit certificate within Alabama Statute, the beneficiary must be dependent on the member in a material degree for support, maintenance, or assistance, and the obligation on the part of the member to furnish it must rest upon some moral or legal or equitable ground and not upon the purely voluntary or charitable impulses or disposition of the member.

Same—Same—Statute:

Within the requirements of Alabama Statute as to dependency of a beneficiary under a benefit certificate the dependency must exist at the time of the beneficiary's nomination and also at the time of the member's death.

Same—Same—Jury:

In an action on a benefit certificate whether beneficiary was dependent at time of nomination and at time of member's death was a question for jury.

Same—Same—Evidence:

In an action on a benefit certificate though plaintiff beneficiary's recital that she was dependent on the member was not binding on the society, her nomination was an issue and was properly provable by the insurance benefit certificate.

Same—Same—Same:

In an action on a benefit certificate, the dependency of plaintiff beneficiary being an issue, she was properly allowed to testify as to familiar terms of address between insured member and herself, the same being a part of the *res gestae*.

Same—Same—Same:

Dependency of beneficiary being an issue, a conversation between her and the member upon her first arrival at his home was admissible.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp W. O. W. v. Hoehn (Ala. S. C.):

85 Southern Reporter (September 18, 1920) 696.

Action on Certificate—Prima Facie Case—Burden of Proof:

In an action on a death benefit certificate, where plaintiff introduced certificate together with evidence that the member had died and was in good standing at time of death, a prima facie case was established and the society relying on provision of constitution and by-laws not endorsed on certificate had the burden of proving such provision.

Same—Same—Non Est Factum:

In an action on a death benefit certificate, plaintiff's evidence that the signature of the officers of society were affixed to the certificate in the manner usually adopted by the society, etc., sufficiently met the burden placed upon her by society's plea of non est factum so as to permit the introduction of the certificate in evidence and to shift to the society the burden of proving that the signatures of the officers of the local camp were essential to the execution of the certificate.

Same—Good Standing—Evidence:

The beneficiary certificate is prima facie evidence that the person to whom it was issued was a member of the society in good standing at the time of his death.

[Judgment for plaintiff below. Here affirmed against society.]

Sovereign Camp W. O. W. v. Burrell (Ala. S. C.):

85 Southern Reporter (September 18, 1920) 762.

Action for Commissions—Contract—Recovery:

Under a contract between a fraternal order and a local secretary providing that compensation to the secretary should be 5 percent of the amount collected and remitted by him to the board, the secretary was not entitled to commissions on collections which he received but which he failed and refused to remit whereby the fraternal order was compelled to sue in order to recover the same.

[Judgment for society below. Here affirmed in favor of society.]

Supreme Lodge K. P. v. Dazell (St. Louis C. A., Mo.):

223 Southwestern Reporter (September 22, 1920) 786.

Action on Certificate—Forfeiture—Waiver:

Where the constitution and by-laws of the fraternal benefit society which were made a part of the death certificate, re-

quired execution of proofs of death as a condition to an action on a certificate, and provided that the furnishing of proof of death blanks should not be construed as a waiver of forfeiture, and further where the blanks themselves contained a similar provision as to waiver and such blanks were furnished with the express understanding that forfeiture was not thereby waived, the furnishing of proof of death blanks did not constitute waiver of forfeiture for failure to pay assessments.

[Judgment for plaintiff below. Here reversed in favor of society.]

Wenom v. National Council of Knights and Ladies of Security (St. Louis C. A., Mo.):

223 Southwestern Reporter (September 22, 1920) 824.

Foreign Society—Compliance with Laws—Presumption:

Where plaintiff admitted that defendant fraternal society was incorporated as a fraternal beneficiary society in Iowa and was licensed to do business in Missouri in the absence of proof to the contrary, great weight must be given to the presumption that the society had complied with the laws of Missouri.

Fraternal Benefit Order—Beneficiary Certificate—Insurance Contract:

Beneficiary certificate is a contract of insurance under assessment plan.

Same—Representation—Warranty:

Representations by a member of fraternal benefit society in procuring his membership are warranties, and, if false, he is not entitled to total disability benefits under his certificate.

Same—Contract—Specific Benefits:

A fraternal society's benefit certificate must specify the amount of the benefit provided thereby and such society cannot reduce the only definite amount specified for total disability on a certain reduction clause.

Action on Certificate—Misrepresentation—Return of Premium.

Before insurer can rely on misrepresentation in procuring insurance, it must return to insured the premiums paid.

[Judgment for plaintiff below. Here affirmed against company.]

Wilson v. Brotherhood of American Yeomen (St. Louis C. A., Mo.):

223 Southwestern Reporter (September 29, 1920) 992.

Action on Certificate—Fraternal Society—Evidence:

Where in an action on a benefit certificate, whether defendant was an assessment life insurance company or a fraternal beneficiary society, introduction in evidence by defendant of its license to do business as a fraternal beneficiary society established a prima facie case that it was such a society.

Fraternal Benefit Order—Vexatious Refusal to Pay—Statute:

Missouri statute as to vexatious refusal to pay does not apply to fraternal societies.

Non-Payment of Assessment—Forfeiture—Waiver:

A subsidiary lodge's agreement to pay an assessment did not constitute a waiver of forfeiture for non-payment by member.

Action on Certificate—Payment of Assessment—Jury:

Whether or not member of fraternal benefit society had through overpayments paid to society sufficient money to keep his certificate alive up to the time of his death was a question for the jury.

[Judgment for plaintiff below. Here reversed in favor of society.]

Olsen v. Supreme Council of Royal Arcanum (St. Louis C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 129.

Action on Policy—Misrepresentation—Recovery:

False representations by member in his application for insurance certificate that he had not suffered from venereal disease within the preceding five years rendered the certificate void and there could be no recovery by beneficiary.

[Judgment for plaintiff below. Here reversed in favor of society.]

Cromeenes v. Sovereign Camp of Woodmen of the World (Springfield C. A., Mo.):

224 Southwestern Reporter (October 13, 1920) 15.

Unincorporated Benevolent Society—Action—Service of Process:

In an action brought in Lancaster County against an unincorporated beneficial society, having no office or property in that county but doing business in Pennsylvania through its grand lodge in Cleveland, Ohio, of which its various subordinate lodges are parts, the writ of summons is improperly served on an officer of a subordinate lodge in Philadelphia, but may be served upon an officer of a subordinate lodge in Lancaster County.

[Judgment in accordance with opinion.]

Oster v. The Brotherhood of Locomotive Firemen and Engineers (No. 2) (C. P., Lancaster Co., Pa.):

37 Lancaster Law Review (October 22, 1920) 279.

ACCIDENT AND HEALTH INSURANCE

Accident Insurance—Cause of Death—Recovery:

If the insured was suffering from a disease, which was accelerated and aggravated by a fall constituting an accident, so as to be a cause operative with it to produce his death, the beneficiary cannot recover on the policy which insures only against death proximately caused by external, violent and accidental means.

Same—Same—Same:

If there is no active disease, but merely a frail general condition, so that powers of resistance are easily overcome, or merely a tendency to disease which is started up and made operative, whereby death results, then there may be recovery, even though the accident could not have caused that effect upon a healthy person in a normal state.

Same—Same—Burden of Proof:

In an action by the beneficiary of an accident insurance policy the burden of proof is upon beneficiary to show that the death resulted from one or more of the causes enumerated by the terms of the contract as establishing the liability of the defendant.

[Judgment for society below. Here affirmed in favor of society.]

Leland v. Order of United Commercial Travelers of America (Mass. S. C.):

124 Northeastern Reporter (November 18, 1919) 517.

Policy—Contract—Ambiguity—Construction:

In case of doubt or ambiguity the language of the insurance policy should be most strongly construed against the insurer, but that construction cannot be resorted to unless ambiguity exists.

Health Insurance—Contract—Limited Indemnity:

Where the health policy limited full indemnity to the period during which insured should be necessarily and continuously confined within the house and therein regularly visited by a physician, the insurer was not liable to pay the full indemnity for the time when insured was convalescent and though unable to go out for his ordinary affairs, was able to sit on the porch and make visits with his doctor.

Same—Notice of Illness—Proof of Mailing:

In an action on a policy of health insurance testimony of insured's physician that he mailed the notice of insured's illness to the insurer, as required by the policy, was sufficient proof of mailing.

Same—Same—Same—Presumption:

A presumption arises from proof of mailing of a letter that it was duly received.

Same—Same—Compliance with Policy—Sufficiency of Evidence:

In an action on a policy of health insurance the evidence was *Held* to warrant the finding that the notice of illness was in compliance with the requirements of the policy.

[Judgment for plaintiff below. Here affirmed against company.]

Reeves v. Midland Casualty Company (Wis. S. C.):

174 Northwestern Reporter (November 28, 1919) 475.

Action on Policy—Cause of Death—Sufficiency of Complaint:

In an action on the policy of accident insurance, the complaint alleging that the insured while at work was poisoned by the accidental, involuntary, and unconscious inhalation of sewer gas, which poisoned his system so that he died, was sufficient to withstand demurrer on the ground that it did not show that death resulted solely from the involuntary and unconscious inhalation of sewer gas.

Same—Same—Pleading:

In an action on a policy of accident insurance, the complaint alleging that death resulted from insured's involuntary and unconscious inhalation of sewer gas, was controlled and added by a statement contained in the policy specifying that a certain sum should be payable if loss of life resulted solely from such cause.

Same—Same—Practice:

In an action on a policy of accident insurance, other causes or contributing causes than those pleaded of the death of insured, and the alleged fact that insured wilfully inhaled the sewer gas which caused his death, were provable under general denial.

Same—Same—Pleading:

Demurrer to paragraphs of answer alleging matters provable under general denial should be sustained.

Same—Same—Appeal and Error:

The App. C. will not weigh the evidence.

Same—Trial—Directed Verdict:

Where there was evidence on each material allegation of the complaint, to have granted defendant's motion for a directed verdict would have been an invasion of the province of the jury.

Same—Same—Same:

The court in passing on a motion to direct a verdict, must accept as true all the evidence and interferences against the movant.

Same—Same—Evidence Res Gestae:

In an action on policy of accident insurance, the plaintiff's

testimony that her husband, the insured, after he had returned home from the place of injury, a distance of about three miles, and about ten hours later, had told her he had to pull a sewer gas plug and got sewer gassed, was inadmissible, such statement not being part of the *res gestae*.

Same—Same—Same:

In an action on accident policy, error in the admission of certain testimony of plaintiff as to what the insured said to her regarding the cause of his injury, was harmless, where she later answered the same question to the same effect without objection to such effect.

[Judgment for plaintiff below. Here affirmed against company.]

Massachusetts Bonding & Insurance Company v. Free
(Ind. App.):

124 Northeastern Reporter (December 2, 1919) 716.

Action on Policy—Accidental Injury—Evidence:

Insured, who had been in good health, arrived home late in the afternoon, all drawn over, pale, and with his face drawn with pain; his overcoat was covered with mud, and one of the buttons was gone, with part of the cloth torn out with it, and there were spots of blood on one leg of his drawers below the knee. The bundles which he carried were muddy and damp. After entering the house, he suffered greatly, and continued to suffer increasing pain. His condition grew worse and twelve days later he underwent an operation. The incision was slightly above the navel. When the incision was made, the abdomen was swollen, and when the physician made the cut, a black watery blood gushed out. Death came eight days later. Such evidence *Held*, Sufficient to justify jury in finding that there was "accidental injury."

Same—Same—Same:

Certificate of attending physician attached to proof of loss and competent for the purpose of showing compliance with the terms of the policy, but incompetent against the company to prove any facts therein. Such facts, therefore, unless otherwise proven, should not have been included in the hypothetical question.

Same—Same—Hypothetical Testimony:

The weight to be given to the hypothetical questions and answers relative to the cause of the insured's condition and death, was for the jury.

Same—Same—Evidence:

The expressions of assured, the deceased, "I fell", and "I hurt myself" which were made upon entering his home upon the day of the alleged accident, were not admissible as expressions of pain of part of the *res gestae*. They were merely narrative of past facts, and rather inadmissible.

[Judgment for company below. Here reversed against company.]

Abendroth v. Fidelity Insurance & Deposit Co. of Maryland (Ind. App.):

124 Northwestern Reporter (December 2, 1919.) 714.

Action on Policy—Fatal Injury—Case for Jury:

In an action on accident policy to recover for death of insured, a traveling salesman, while riding as a passenger in a railroad coach of a common carrier, the question whether insured received fatal injury from a fall while so riding was for the jury.

Appeal and Error—Credibility of Witness—Question for Jury:

The credibility of the witness is a question for the jury and is not to be determined by the Court of Appeals.

[Judgment for company below. Here reversed against company.]

Hills' Adm'x v. No. American Acc. Ins. Co. (Ky. C. A.):
215 Northwestern Reporter (December 10, 1919) 428.

Direct Verdict—Appeal and Error:

Where the court heard certain evidence but erroneously refused to submit it to the jury, and the verdict was directed, all competent evidence offered, as well as that received, will be considered in determining an appeal.

Same—Same:

Although prejudice is presumed from the exclusion of competent testimony from the jury, if the excluded evidence and the evidence admitted do not render erroneous the direction of the verdict, the case will not be reversed.

Accident Insurance—Death—"Accidental Means":

The insured, who was employed to separate unmarketable from marketable oranges, ate three of them and shortly afterwards died of gastritis. *Held*, That the death was not by "accidental means" within the provision of the policy, although the result was accidental.

[Judgment for company below. Here affirmed in favor of company.]

Martin v. Interstate Business Men's Acc. Ass'n. (Ia. S. C.):

174 Northwestern Reporter (December 12, 1919) 577.

Action on Policy—"Total Disability and Confinement within the House":

A nurse, who became afflicted with a disease known as sub-acute congestion of the conjunctiva, accompanied with iritic irritation and eczema of the eyes and eye lids, which calls for exclusion of light from the eye and exercise in the open and fresh air was not "totally disabled and confined within the house" within the meaning of an accident and sickness policy, having gone from place to place for change of air.

[Judgment for plaintiff below. Here reversed in favor of company.]

Bucher v. Great Eastern Casualty Co. (St. Louis C. A.):

215 Southwestern Reporter (December 17, 1919) 494.

Accident Policy—Change of Occupation—Evidence:

Inspection of a leaky roof to mark place for repairs is one of the "ordinary duties about his residence" of a resident owner within an accident insurance policy clause reducing the amount of recovery in case of change of occupation to one classified by company as more hazardous.

[Judgment for plaintiff below. Here affirmed against company.]

Southern Surety Co. v. Georgia Casualty Co. (St. Louis C. A.):

215 Southwestern Reporter (December 17, 1919) 501.

Action on Policy—Trial—Demurrer to Evidence:

Upon a demurrer to the evidence, the testimony of witness for the demurree must be accepted as true, unless inherently incredible, or judicially known to be untrue; and if several inferences may be drawn from the evidence, differing in degrees of probability, those most favorable to the demurree must be adopted, unless forced, strained or manifestly repugnant to reason.

Same—Cancellation—Question for Jury:

In action on a policy of accident insurance to recover for accidental death of insured, defense being that policy had been canceled by company prior to insured's death by written notice mailed to insured's latest address appearing on the records of the company, under Acts 1912, c. 78 Sec. 1 Subd. "h", it was *Held*, That it was error to sustain defendant's demurrer to the evidence.

Same—Change of Address—Notice:

Agent to solicit insurance was empowered to receive notice of change of address of insured, where company had requested agent to furnish it with insured's address.

Same—Notice of Cancellation—Sufficiency of Address:

Where the only address of the insured given to the insurer was in care of a certain company by whom he was employed, when he gave such address, notice of cancellation not so addressed was insufficient, and it was immaterial whether insured was still in the employment of such company or not, or whether a letter so addressed would have reached him.

Same—Same—Same:

Notice of cancellation mailed to insured at his latest address appearing on the records of the company with check for unearned premium is sufficient and the insured assumes the risk of due receipt of such notice.

Same—Same—Same:

Where the policy authorized cancellation by written notice to insured "mailed to his latest address appearing on the company's record," it is the duty of the company to see that its records correctly set forth the facts as to his address communicated to it by insured; and it is *Held*, To

the same measure of responsibility as if it had done so. If from neglect, its records do not correctly state the address given by insured, notice of cancellation mailed to such incorrect address as appears on its records is insufficient.

Same—Appeal—Error—Invited Error:

In an action on a policy of accident insurance, where the demurrer to the evidence was interposed after the motion to exclude evidence had been made but both motions were passed on at the same time and the demurrer sustained, if the defendant suffered in consequence thereof and would not have demurred if its motion to exclude have been previously overruled it cannot complain as the error was by it.

[Judgment for company below. Here reversed against company.]

Wolontier v. U. S. Cas. Co. (Va. S. C.):

101 Southeastern Reporter (December 20, 1919) 58.

Action on Policy—"Representation"—Definition:

Representation is an oral or written statement, which precedes the contract of insurance and becomes a part thereof, if so stipulated, made by the assured or his authorized agent to the insurer or its authorized agent and relates to facts necessary to enable the insurer to determine whether it will accept the risk and at what premium.

Same—Same—Materiality:

A representation is material when it communicates any fact important to the nature of the risk, that may be reasonably supposed to influence the judgment of the insurer in undertaking the risk or calculating the premium.

Same—Misrepresentation—Burden of Proof:

Insurer seeking to avoid payment of policy on ground of misrepresentation in application, has the burden of proving that the representations were false and material.

Same—Same—Evidence Considered:

Where insured had himself refused to accept a previous policy and had ordered its cancellation his representation in application that no application for insurance had ever been declined and no policy issued to him had ever been canceled was substantially true.

Same—Same—Same:

Where insured, three years previously, had been indemnified under another policy in the amount of \$133.88, his statement in application for present policy, that he had received "About \$50," where he had no means of refreshing his memory, was not materially false or meant to deceive.

Same—Representations—Materiality—Question for Jury:

The materiality of insured's statement in application as to previous indemnity received by him is a question for the jury.

Same—Misrepresentations—Evidence Considered:

Statement of insured that he was temperate, in answer to

question in application as to habits at time of application, was not substantially untrue, where insured had not taken a drink for two or three months prior thereto.

Same—Misrepresentations—Knowledge of Agent Imputed to Company:

Where insured, in making answer to question in an application as to habits, acted upon advice of insurer's agent, who had been familiar with the insured's habits for twenty years, insurer is estopped from asserting that the answer is a misrepresentation, since knowledge of agent will be imputed to insurer.

Same—Soliciting Agent—Agent of Insurer:

Agent who solicits insurance will be regarded as agent of insurer and not of insured, notwithstanding the provision of the policy that he is acting as agent of insured.

Same—Misrepresentation—Conduct of Agent—Estoppel:

Where insurer's agent undertakes to write into application, applicant's answer and enters false answers, or by misleading statements induces the applicant to enter false answers, when applicant is acting in good faith, the insurer will be estopped to rely upon such answers to defeat policy.

Same—Trial—Instructions:

In an action on an accident policy involving the issue of falsity of insured's statements that his habits were temperate the court's refusal to give a requested instruction defining the word "habit" is not error, where the meaning of the word, as used in the application and policy was explained by instructions given.

[Judgment for plaintiff below. Here affirmed against company.]

Aetna Life Insurance Co. v. McCullagh (Ky. C. A.):

215 Southwestern Reporter (December 24, 1919) 821.

Action on Policy—Evidence—Privileged Communication:

In a suit against an accident insurer, plaintiff's former attorney was properly required to identify and read in evidence the letter which he had written to the defendant insurer regarding plaintiff's claim, and which tended to show that plaintiff's present contention as to the insurer's misrepresentation at the time of the settlement was an afterthought; such information being intended to be communicated to a third person.

Release—Fraud—Voidable:

A release procured by an accident insurer from the injured, is not void, even though obtained by fraud, but is voidable at the instance of the policyholder and is binding until voided.

Same—Same—Same:

Where the insurer procured a release from the insured by fraud, insured was not required to return the consideration paid for its execution as a condition to avoiding it, but

until it was rescinded by returning the consideration or by bringing a suit it was binding upon him.

Same—Same—Reasonable Time to Repudiate:

When one has made a contract of settlement compromising his cause of action and giving release, he must in some manner repudiate it for fraud in its procurement and he has a reasonable time after discovery of the fraud in which to act; reasonable time is a question of fact for the jury.

[Judgment for company below. Here affirmed in favor of company.]

Kilgo v. Continental Casualty Co. (Ark. S. C.):

215 Southwestern Reporter (December 24, 1919) 689.

Policy—Exceptions—Construction:

Where a provision of a policy of accident insurance contained an exception from liability, where the injury is caused by any person employed under the age of 16 years, it was *Held*, That the defendant was not liable upon the policy for injury sustained by one who fell into the unprotected opening caused by the ascending of an elevator while the operator, a boy of 14 years of age, was absent.

Same—Covenants—Construction:

Where the language of a covenant is unambiguous, clear and specific, the rule is similar to that adopted in the construction and interpretation of statutes, but note that no room is left either for interpretation or construction.

Appeal and Error—Directed Judgment on Reversal:

Where the judgment of the Supreme Court, reversing judgment of the District Court, by inadvertence further directed that judgment be entered for defendant, its judgment will be reversed, as the legal effect of the reversal was to require the issuance of a venire de novo in the court below.

[Judgment in accordance with opinion.]

Lynch v. Commercial Casualty Ins. Co. (N. J. C. E. A.):

108 Atlantic Reporter (January 1, 1920) 188.

Action on Policy—Notice of Injury—Time:

Where the loss of an eye did not result within 20 days after the accident, and a physician after such time informed insured that the accident might cause the loss of the eye, but that he could not tell, a notice to the insurer within 20 days after insured had definite information from the physician that the accident was the cause of loss of eye, complied with the policy requiring notice of injury within 20 days from date of accident unless it was not "reasonably possible to give such notice."

Appeal and Error—Motion for Judgment—Admission of Evidence:

It was not prejudicial error to allow plaintiff, after the jury was discharged and both parties had moved for judg-

ment on the pleadings, to call a physician to correct his testimony.

[Judgment for plaintiff below. Here affirmed against company.]

Sheafor v. Standard Accident Ins. Co. of Detroit, Michigan (Wis. S. C.):

174 Northwestern Reporter (January 2, 1920) 916.

Health Insurance—Maternity Benefit—Illegitimate Child—Recovery:

Among the benefits conferred by the National Insurance Act, 1911, upon insured persons is a benefit called "maternity benefit," which is defined in s. 8, sub-s 1 (e) as "payment in the case of confinement of the wife or, where the child is a posthumous child, of the widow of an insured person * * * of a sum of thirty shillings." By s. 14, sub-s. 1, of the National Insurance Act, 1913, "maternity benefit shall in every case be the mother's benefit," and "the benefit shall be administered in the interests of the mother and child in cash or otherwise by the approved society of which the husband is a member": *Held*, first, That maternity benefit is payable in the case of the confinement of a married woman by reason of the fact that her husband is an insured person irrespective of the paternity of the child.

[Judgment in accordance with opinion.]

Scott v. Northumberland and Durham Miners Permanent Relief Fund Friendly and Approved Society:

[1920] 1 K. B., The Law Reports (January 7) 174.

Policy—"Accident" and "Accidental"—Interpretation:

The terms "accident" and "accidental" as used in insurance policy covering accidental death or injury by accident or accidental means are presumed to be employed in their ordinary and popular sense as meaning, happening by chance; unexpectedly taking place, not according to the usual course of things; or not as expected; an event which takes place without the foresight or expectation of the person acted upon or affected by the event.

Same—Construction:

Insurance policies are to be construed most liberally in favor of the insured and most strongly against the insurer.

[Judgment in accordance with opinion.]

Pacific Mutual Life Ins. Co. v. Meldrim (Ga. C. A.):

101 Southeastern Reporter (January 10, 1920) 305.

Policy—Traveling as Passenger—Recovery:

Where the accident policy provided for specific indemnity for loss of life "only when sustained in the manner specified in Sec. D, Clause I," which specifies accidents while insured was traveling as a passenger, beneficiary could not recover therein for death of assured which occurred in a manner not specified in such clause, but occurred in a manner specified in another clause of Sec. D, even though there was no provision in the policy for indemnity for death

resulting from accident sustained in manner specified in such other clause, where there was another section in policy referring to all clauses of Sec. D.

[Judgment in accordance with opinion.]

Hartwig v. Southern Surety Co. (Tex. C. C. A.):

216 Southwestern Reporter (January 14, 1920) 455.

Action on Policy—Trial—Evidence:

In an action on a health insurance policy, based on disability caused by hernia, in which the defendant set up a release from liability for disability due to such cause, it was error to exclude such release, though through inadvertence it was not offered in evidence until the close of the evidence.

Same—Release—Consideration:

Where the insurer of a policy of health insurance waived its legal right to cancel the policy upon the execution by insured of a release covering disability caused by hernia, and such release became part of the insurance contract, such waiver by the insurer constituted a sufficient consideration for the release.

Policy—Cancellation—Estoppel:

Where the insured accepted a policy of health insurance which reserved to the insurer the right to cancel the policy at any time on notice and return of unearned premiums, the fact that insurer had knowledge that insured had hernia prior to the issuance of the policy did not constitute an estoppel on insurer to cancel the policy on that ground.

Same—Disability Due to Hernia—Liability:

A health insurance policy covering disability resulting from illness covers disability of an insured who, while suffering from a hernia, accidentally stepped into a hole in the street, displacing the truss and causing the hernia to come down, whereby he was incapacitated for a period of two months.

Action on Policy—Trial—Practice:

Generally the question of reopening the evidence after the parties have rested lies in the discretion of the court.

[Judgment for plaintiff below. Here reversed in favor of company.]

Massachusetts Bonding Co. v. Florence (Tex. C. C. A.):

216 Southwestern Reporter (January 14, 1920) 471.

Application—False Statements—Question for Jury:

In an action to recover on a health and accident policy, whether the insured made false statements in his application was a question for the jury.

Policy—Notice of Accident—Question for Jury:

Where the insurance policy provides that written notice of injury must be given within 20 days after the date of the accident, but failure to give such notice within that

time shall not invalidate the claim, if it was given as soon as reasonably possible, the mailing of a letter properly addressed to the general agent of the company with postage paid, was sufficient to make a question of notice for the jury.

Same—Same—Sufficiency:

Notice of loss in the form of a verified statement made in duplicate one copy being properly mailed to the company at its office in New York, and the other to its authorized agent in St. Paul, so that the agent might receive the same in the ordinary course of the mail within the time limited for giving such notice, is sufficient.

Action on Policy—Accidental Death—Question for Jury:

The question whether or not the death of insured was the result of an accident was for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

Powers v. Fidelity & Casualty Co. of New York (Minn. S. A.):

175 Northwestern Reporter (January 16, 1920) 111.

Policy—Time of Death—Liability:

Where the policy covers loss of life, member or eye, defining in parenthesis what was to constitute loss of member of eye, "provided such loss shall result within 30 days from date of accident," death of insured occurring more than two months after an accident, was not covered; the proviso applying, not to the parenthetical expression immediately preceding, but to the provision preceding the parenthetical clause for indemnity for loss of life, member, or eye.

[Judgment for company below. Here affirmed in favor of company.]

Drinan v. Cloverleaf Casualty Co. (Mich. S. C.):

175 Northwestern Reporter (January 16, 1920) 176.

Policy—Payment of Premium—Forfeiture:

Under the evidence, the jury had a right to conclude that the accident occurred on December 2, 1917, the date given in the proof of loss, and that the check for last premium payment was mailed to and received by defendant insurer long prior to the accident, and the verdict in favor of plaintiff in action on policy sustained by the evidence.

[Judgment for plaintiff below. Here affirmed against company.]

Arrowsmith v. Bankers Casualty Co. of Minneapolis, Minn. (N. D. S. C.):

175 Northwestern Reporter (January 16, 1920) 207.

Limitation of Action—Statute—"Life Insurance":

The definition of the term "life insurance" in Laws 1907, p. 483, Sec. 73, controls the meaning of that term as used in Sec. 37 of the same act, to the effect that no life insurance company shall limit the time within which any action of law or in equity may be commenced to less than five

years after the cause of action shall accrue. Such statutory provision does not apply to an accident policy containing a provision for an indemnity in case of the death of the insured through accidental means.

Companies Permitted to Write Life Insurance—Statute:

Laws 1907, p. 45, Sec. 73, Subd. 9, providing that it shall be unlawful for any person, copartnership, association, organization, society, order, or fraternity, except life insurance companies, or bona fide fraternal, religious or benevolent society to make or issue life insurance contracts, refers to both assessment and old line companies.

[Judgment for plaintiff below. Here reversed in favor of company.]

Midland Casualty Co. v. Frame (Col. S. C.):

185 Pacific Reporter (January 19, 1920) 656.

Annotation—Injury Received by Insured While Assaulting Another:

Under the above heading appears an annotation to the case of *Meister v. General Accident, Fire & Life Assurance Corporation*; heretofore reported in 179 Pacific Reporter 913; 4 A. L. R. 718.

Annotation—Provision Regarding Voluntary Exposure to Danger as Applicable to Dangers Incident to Automobiling:

Under the above heading appears an annotation to the case of *Rowe v. United Commercial Travelers of America*; heretofore reported in 172 Northwestern Reporter 454; 4 A. L. R. 1235.

Annotation—Provision Excluding or Limiting Liability in Case of Chronic Diseases:

Under the above heading appears an annotation to the case of *American Life and Accident Insurance Company v. Nirdlinger*; heretofore reported in 30 Insurance Digest 328; 4 A. L. R. 871.

Policy—Restriction—Validity:

The clause in a policy providing that where the accidental injury causing the loss or the loss itself resulting from freezing but resulted while engaged in his occupation, the recovery shall be restricted to one-eighth the usual amount, is valid.

Action on Policy—Cause of Death—Evidence:

Evidence that insured went hunting and was found next morning lying on his back with part of one leg in a marshy hole and his body frozen, does not sustain a jury finding that death was proximately caused by getting his foot caught, but to establish death by freezing under policy restricting recovery to one-eighth the usual amount in case of such death.

[Judgment in accordance with opinion.]

Continental Casualty Co. v. Hardenbergh (Miss. S. C.):

83 Southern Reporter (January 24, 1920) 278.

Action on Policy—Death—Burden of Proof:

The burden of proof rests upon insurer to establish the fact that death of injured has resulted from one of the excepted causes enumerated in policy of accident insurance.

Same—Contract—Construction:

Where the meaning of a policy of insurance is ambiguous or so drawn as to be thoroughly susceptible of different constructions, it will be construed more strictly against the insurer and that construction adopted which is most favorable to the insured.

Same—"Accident"—Definition:

Where one person injures another and the injury was not the result of misconduct or provocation by the injured person and is unforeseen by him, it is as to him an "accident" within the meaning of an accident policy insuring him against bodily injury effected through external, violent and accidental means.

Same—"Injury Intentionally Inflicted upon Insured"—Construction:

A provision contained in an accident insurance policy, which excepts from operation of the policy "injuries intentionally inflicted upon the insured by any other person," contemplates injuries intended against the insured and not injuries intended against another, and such exception will not relieve the insurer from liability for an injury to the insured inflicted by another person, where the other person, intending to injure someone other than the insured, mistook the insured for the person to be injured and intentionally inflicted upon him the bodily injury while the insured was not aware of the intent to injure him and had done nothing to bring about the injury.

[Judgment for plaintiff below. Here affirmed against Company.]

General Acc., Fire and Life, Assur. Corp., Ltd. v. Hymes (Okla. S. C.):

185 Pacific Reporter (February 2, 1920) 1085.

Action on Policy—Accidental Death—Burden of Proof:

In a suit on accident insurance policy, the burden of proof is on the plaintiff to show that death is accidental.

Same—Suicide—Presumption:

"The presumption against death by suicide is prima facie and rebuttable. It prevails when the cause of death is unknown. It does not prevail as a presumption in the presence of facts bearing upon the question whether death is intentional or accidental."

Same—Evidence—Verdict:

Where the probative force of the evidence is so strong

that the jury would not be justified in rendering any other verdict, the Supreme Court will not disturb the verdict.

[Judgment for company below. Here affirmed in favor of company.]

Dodder v. Aetna Life Ins. Co. of Hartford, Conn. (Neb. S. C.):

175 Northwestern Reporter (February 13, 1920) 651.

Action on Policy—Suicide—"Accident":

Self inflicted death with a suicidal intent while sane was not an "accident" covered by a policy of accident insurance.

[Judgment for plaintiff below. Here reversed in favor of company.]

Bayha v. Fidelity & Casualty Co. of New York (Mo. S. C.):

217 Southwestern Reporter (February 13, 1920) 269.

Action on Policy—Occupation—Classification:

An employe of an electric gear shift manufacturer, whose employment consisted of both office work and traveling for the purpose of interesting automobile manufacturers in the electric gear shift and procuring contracts for the equipment of automobiles therewith, and who in visiting such manufacturers used an automobile to show how automobile was equipped with such gear shift was not "an automobile dealer demonstrating" or a "salesman traveling, selling, operating, exhibiting or setting up machinery or implements or automobiles" within the classification set out in the manual of rates of an accident insurance company, such insured employe was properly placed in the classification of "office duties and traveling."

[Judgment for plaintiff below. Here affirmed against company.]

Warren v. Globe Indemnity Company of New York (Wis. S. C.):

176 Northwestern Reporter (March 5, 1920) 73.

Action on Policy—Partial Disability—Issues:

In an action on an indemnity policy providing indemnity for total and also for partial disability, it was error not to submit the issue of partial disability if there was any evidence upon which the jury had a right to find partial disability.

Same—Same—Same:

The refusal to submit the issue of partial disability was not erroneous where the evidence showed either total disability or merely a pretense of disability.

Same—Same—Same:

Where the ability of an injured nurse to perform some isolated duty of a trained nurse defeats recovery on a policy as for total disability, nevertheless, it does not entitle her to recovery for "partial disability that prevents the assured from performing fully, work essential to the duties of his

occupation," and the evidence of such ability did not necessitate the submission of the issue of partial disability.

[Judgment in accordance with opinion.]

Marren v. Fidelity & Casualty Co. of New York (Ia. S. C.):

176 Northwestern Reporter (March 12, 1920) 203.

Action on Policy—Receipt of Notice—Question for Jury:

In an action on a policy of accident insurance, the question whether insurer received notice of the accident by letter written by insured's son within proper time was a question for the jury.

Same—Mailing—Presumption:

There is a legal presumption that a letter deposited in the mail properly addressed and stamped reached the addressee.

Same—Cause of Insured's Condition—Question for Jury:

In an action on policy of accident insurance, the question whether insured's condition was produced by the alleged accident independently of all other causes, as required by the policy, was for the jury.

Same—Damages—Practice:

The question of the amount of damages recoverable from accident insurer is not presented for review on its appeal where insurer made no request for an instruction stating the correct measure of damages or made no objection to instruction given by the trial court.

[Judgment for plaintiff below. Here affirmed against company.]

Kubey v. Travelers' Protective Ass'n. of America (Wash. S. C.):

137 Pacific Reporter (March 15, 1920) 335.

Application—Misrepresentation—Recovery:

Where applicant stated in his application for policy of accident insurance that he had received no indemnity from any other indemnity company, when in fact at the time he made such representations he had received indemnity six times, from other companies, such false and fraudulent representations avoided policy.

Same—Same—Same:

Where an applicant for accident insurance fraudulently represented in his application that he had never received any indemnity from any other company when in fact he had received indemnity at least six times and insurer before discovering such fraud paid an indemnity in excess of all premiums paid, the insurer could avoid the policy without tendering back premiums paid.

Payment of Indemnity—Fraud—Right of Insurer:

Where an accident policy was obtained by fraud and insurer paid an indemnity thereon without knowledge of such

fraud at the time such indemnity may be recovered back by insurer.

[Judgment for plaintiff below. Here reversed in favor of company.]

Great Eastern Casualty Co. v. Collins (Ind. App.):

126 Northeastern Reporter (March 16, 1920) 86.

Policy—Failure to Read:

Policyholder is bound by the conditions of the policy, notwithstanding he failed to read them.

Policy—Termination—Right of Insurer:

Where a health and accident policy extended until February 1, 1908, and for such other periods as might be stated in renewal receipts under a provision of the policy declaring that an acceptance of any renewal premium shall be optional the insurer had the right to terminate the policy by refusing to accept a renewal premium.

Same—Same—Same—Pleading:

The failure of insurer which terminated the health and accident policy to plead the condition of the policy authorizing it to terminate did not prevent it from defeating recovery by insured of premiums already paid.

[Judgment for plaintiff below. Here reversed in favor of company.]

American Nat. Ins. Co. v. Ball (Tex. C. C. A.):

218 Southwestern Reporter (March 17, 1920) 71.

Action on Policy—Contract—Construction:

Policy of insurance should be interpreted by the rule governing other written contracts where the meaning of the language used is clear and explicit.

Same—Same—Same:

In cases where there is doubt as to the meaning of the language used, the policy should be construed strictly against insurer and favorable to the insured.

Same—"Result"—Definition:

The policy providing that in case of accident or disease resulting thereafter by or because of which insured should suffer the loss of one or both eyes, insured might mature the full value of the policy, insuring against the loss of an eye from disease whether or not the disease existed at the time of the policy or began afterwards; "result" meaning to terminate or to end.

Same—Fraud—Recovery:

If an applicant for a policy insuring against the loss of one or both eyes from disease perpetrated a fraud in misrepresenting and concealing the condition of his eye, such fraud would void the insurance.

[Judgment for plaintiff below. Here affirmed against company.]

Home Mut. Ben. Ass'n. v. Mayfield (Ark. S. C.):

218 Southwestern Reporter (March 24, 1920) 371.

Action on Policy—Exposure to Danger—Recovery:

If insured met his death by attempting to leave an elevator while in motion, thereby unnecessarily exposing himself to obvious danger, there could be no recovery on his policy of accident insurance.

Same—Conveyance—"Passenger Elevator":

Where the policy provided indemnity to the insured against accident within any public passenger conveyance or while a passenger in an elevator, a proviso limiting the liability of insurer if insured should meet with an accident while "entering or leaving or attempting to enter or to leave or upon the step or steps or platform or running board of any conveyance," did not apply where insured was killed while leaving the passenger elevator.

[Judgment for plaintiff below. Here affirmed against company.]

Davis v. Great Eastern Casualty Company (Mich. S. C.):

176 Northwestern Reporter (March 26, 1920) 446.

Action on Policy—Cause of Death—Question for Jury:

In an action on policy of insurance, insuring against death from accidental injury "independently of all other causes," where the evidence showed that insured had been afflicted previous to his death with cirrhosis of the liver, and that 17 days before his death, he had suffered a fall on the stair case, which was alleged to have caused his death, the issue whether death was caused by the fall or by the disease was for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

Abbott v. Travelers' Ins. Co. (Mich. S. C.):

176 Northwestern Reporter (March 26, 1920) 473.

Action on Policy—Misrepresentation—Question for Jury:

In an action on insurance policy for accidental injury causing hernia, whether insured in his application falsely represented that he had not had hernia was a question for the jury.

Same—Evidence:

The proof in an action on an accident policy made a case of accidental injury under the policy and not one of special indemnity resulting from illness.

Same—False Statements—Risk:

Whether the alleged false statements in application as to previous hernia materially affected either the acceptance of the risk or the hazard assumed by the insurer was a question for the jury.

Same—Reduction of Verdict—Practice:

Where the company below was not requested to reduce the verdict, the Supreme Court should not act in the first in-

stance unless it is quite apparent that the appellant would suffer an injustice that could not be remedied.

[Judgment for plaintiff below. Here affirmed against company.]

Ivanosovich v. North American Life & Casualty Co.
(Minn. S. C.):

176 Northwestern Reporter (March 26, 1920) 502.

Action on Policy—Death—Burden of Proof:

In an action on an accident policy, insuring "against loss resulting directly, exclusively and independent of all other causes from bodily injury sustained * * * solely through external, violent and accidental means," the burden of proving that accidental injury was the sole cause of death, was upon plaintiff.

Same—Evidence—Court:

In an action on an accident policy involving the issue of whether insured on whom a beer barrel had fallen, in fact died from the injury so received, or from other causes, the court knows that the ordinary full beer barrel weighs about 350 pounds.

Same—Presumption of Fact—Rebuttal:

Presumption of fact may be rebutted and entirely overcome or removed from the case by competent proof going to supply the fact presumed.

Same—Congestion of Lung—Evidence:

The fact that congestion of a lung could be caused by a blow is not a matter of common knowledge but is a scientific fact to be shown by medical experts.

[Judgment for plaintiff below. Here reversed in favor of company.]

Koprivica v. Standard Acc. Ins. Co. (Mo. C. A.):

218 Southwestern Reporter (March 31, 1920) 689.

Action on Policy—Death—"Accidental Means":

Where insured died of blood poisoning from an infected abrasion caused by rubbing his head which was bald with an infected towel, such death was caused by "accidental means," where there was no evidence that he knew of the infected condition of the towel at the time he used it.

[Judgment for plaintiff below. Here affirmed against association.]

Business Men's Acc. Assn. of America v. Schiefelbusch
(U. S. C. C. A.):

262 Federal Reporter (April 1, 1920) 854.

Action on Policy—Occupation—Measure of Recovery:

The fact that insured occasionally or incidentally performed acts that pertained to an occupation classed by insurer as more hazardous than the occupation named in the accident insurance policy did not have the effect of reducing the amount of recovery in the event of injury.

Same—Change of Occupation—Question for Jury:

Whether insured in an action on an accident insurance policy had changed his occupation was a question to be determined by the jury.

Same—Partial Disability—Notice:

Where insured served notice on insurance company that he was partially disabled for 16 weeks, that at the time of filing his claim the partial disability continued; that an injured limb then caused swelling and pain when he attempted to walk, such notice was sufficient and company was liable for the ten week period of partial disability that prevailed subsequent to the filing of the original claim.

[Judgment for plaintiff below. Here affirmed against company.]

Wheeler v. Standard Acc. Ins. Co. of Detroit, Mich. (Neb. S. C.):

176 Northwestern Reporter (April 2, 1920) 670.

Action on Policy—Notice of Accident—Authority of Agent:

In an action on an indemnity insurance policy, covering loss on account of personal injury sustained by members of general public because of acts of insured in performing a paving contract, evidence that the insured's agent countersigned the policy as general agent, that he had authority to appoint sub-agents, was sufficient to establish that such agent was a duly authorized agent to receive notice of an accident within the terms of the policy.

Same—Parties:

Despite an agreement with a third party advancing money to pay liability, insured, holding indemnity policy covering liability to members of general public by reason of performance of paving contract could sue as real party in interest.

Same—Notice of Accident—Estoppel:

In an action on an indemnity insurance policy covering liability to members of general public by reason of performance of paving contract, whether or not insurer was estopped to deny notice of accident was question for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

Vandervliet v. Standard Acc. Ins. Co. of Detroit, Mich. (Mich. S. C.):

176 Northwestern Reporter (April 2, 1920) 574.

Action on Policy—Fraud—Presumption:

Presumption is always against fraud.

Same—Same—Burden of Proof:

One who seeks relief from fraud must allege it and prove it by clear and satisfactory evidence; mere suspicion of fraud is not sufficient.

Same—Misrepresentation—Change of Name:

Since a man may lawfully change his name without resort-

ing to legal proceeding and by general usage or habit acquire another a representation that applicant's name was one in fact assumed, was not in fact misrepresentation.

Same—Illegal Wife—Burden of Proof:

The law presumes that deceased insured was innocent of bigamy and perjury when he procured the license to marry plaintiff and that he did not commit fraud when he obtained the insurance policy, and the burden was on the insurer to overcome these presumptions and establish its defenses that insured entered into an illegal marriage and that plaintiff was not his lawful wife.

"Occupation"—"Zanjero"—Definitions:

In an action on policy by widow of insured for her husband's death, defended on the ground of misrepresentation of "occupation," it was *Held*, That the word "occupation" means the principal business in which one engages and where insured represented that he was superintendent of a water company and insurer's agent added "supervising duties only," evidence that he was "zanjero" a Spanish word meaning water boss of an irrigating concern, and that he occasionally used a shovel to make quick repairs while acting as boss, did not show such misrepresentation as would avoid policy.

Action on Policy—Misrepresentation—Burden of Proof:

The burden of proving misrepresentation as to insured's income was upon company.

Same—Misrepresentation of Habits—Evidence:

Evidence considered, there was no misrepresentation by insured as to temperate habits.

Policy—Warranties—Materiality:

The words "full compliance of the insured and beneficiary with all provisions of this policy is a condition precedent to recovery hereunder and any failure in this respect shall forfeit to the company all right to any indemnity," did not render materiality of warranties in the policy material to the risk as a matter of law.

Same—Same—Same:

Where insurer failed to exercise the right to rescind and set up breach of warranty as a defense to payment and where the evidence of insured's fraud was not clear and uncontradicted, so that the materiality of the warranties is a matter of law, the question of such materiality was for the jury.

Policy—Ambiguity—Construction:

Any ambiguity of an insurance contract is to be interpreted most strongly against the insurer.

Action on Policy—Agent's Opinion—Evidence:

Testimony of agent as to whether he would have written the policy had he known facts alleged to constitute falsity of warranties was not admissible.

[Judgment for plaintiff below. Here affirmed against company.]

Everett v. Standard Acc. Ins. Co. (Cal. D. C. A.):

187 Pacific Reporter (April 5, 1920) 996.

Action on Policy—Suicide—Evidence:

In an action on a policy, it was *Held*, That the evidence was sufficient to show that insured committed suicide while sane.

Policy—Suicide While Insane—Statute:

Under Missouri statute, a provision of a policy exempting insurer from liability in case insured committed suicide while insane is inoperative.

Same—Suicide While Sane—Validity—Exemption:

A provision in a policy exempting insurer from liability in case insured committed suicide while sane is valid.

[Judgment for plaintiff below. Here reversed in favor of company.]

Gates v. Traveler's Ins. Co. (Mo. C. A.):

216 Southwestern Reporter (April 7, 1920) 927.

Action on Policy—Death—"Accidental Means":

There can be no recovery if injured does a voluntary act, the natural, usual and to be expected result of which is to bring injury upon himself; an injury or death so occurring is not produced by "accidental means."

Same—Same—Same:

Where the policy does not insure against accidental death or accidental injury, but against death or injury effected by accidental means, it is not enough that the death or injury should be unexpected or unforeseen; there must be something of an unexpected or unforeseen character in the means through which the injury was sustained or the death produced.

Same—Same—Same:

Where insured voluntarily underwent a dental operation and the dentist unintentionally introduced into insured's system virulent germs which were on what such dentist supposed were clean, aseptic instruments, resulting in blood poisoning and insured's death, it was *Held*, That such death was effected "directly and independently of all other causes, through external, violent and accidental means" within the meaning of the policy of accident insurance.

[Judgment for company below. Here reversed against company.]

Horton v. Traveler's Ins. Co. (Cal. D. C. A.):

187 Pacific Reporter (April 12, 1920) 1070.

Action on Policy—Injury—"Immediate and Total Disability":

Where a policy of accident insurance providing for benefits, stipulated that injuries must be "immediately and totally disabling," and insured hurt his knee while jumping from his room in a burning hotel on January 30, and continued with his employment which was that of a locomotive engineer until February 23, not consulting a physician until February

26, it was *Held*, That such injury was not "immediately and totally disabling" within the meaning of the policy.

[Judgment for plaintiff below. Here reversed in favor of association.]

Masonic Protective Association v. Farrar (Ind. App.):

126 Northeastern Reporter (April 13, 1920.) 433.

Action on Policy—Payment of Premium—Waiver:

Where an accident policy provided that after default in payment of a premium, its subsequent acceptance by insurer should reinstate the policy as to sickness beginning more than ten days after such acceptance, it was *Held*, That the mere acceptance of a past due premium was not a waiver of prompt payment but only an acceptance in accordance with the terms of such provision.

Same—Same—Same:

The mere custom of receiving past due premiums did not of itself create a waiver of prompt payment of premiums.

[Judgment for plaintiff below. Here reversed in favor of association.]

Wiser v. Central Business Men's Assn. (Mo. C. A.):

219 Southwestern Reporter (April 14, 1920) 102.

Action on Policy—Death—Recovery:

Where accident and health policy provided for payment of specified sum if insured should lose his life from injuries sustained while traveling as a passenger, etc., and insured was struck on the head with a club and died from the injury thus received, there could be no recovery on the policy.

[Judgment in accordance with opinion.]

Walther v. Southern Surety Co. (Ky. C. A.):

219 Southwestern Reporter (April 14, 1920) 133.

Action on Policy—Homicide—Recovery:

A homicide resulting from bad feeling is an "accidental killing by violence" for which an accident insurer is liable in the absence of provision in the policy relieving it from such liability.

Same—Same—Evidence:

In an action on a policy of accident insurance, evidence that insured's son, after shooting insured went down stairs and said to his mother that he had "got him" or "shot him." and that she replied, "I told you not to do that," would not have been sufficient to show such wife's participation in the murder.

Same—Forfeiture—Construction:

Conditions in insurance contract intended to cause a forfeiture should be construed most strongly against the insurer.

Application—Occupation—Misrepresentation:

Representation of applicant who was a contractor with the chief duty of supervising the work of his servants in brick

construction, that his duties were those of "proprietor in supervising only," was not rendered false so as to avoid by the showing that sometimes he would take the trowel and lay bricks to demonstrate to the servants how the work was to be done.

Same—Same—Other Insurance:

Applicant's failure to disclose his membership in a social club providing a weekly sick benefit of \$4.00 and to report a policy providing a weekly benefit of \$5.00, subsequently taken out by the wife was *Held* not material so far as the insurer against death is concerned and did not avoid policy.

[Judgment for plaintiff below. Here affirmed against company.]

Standard Accident Ins. Co. v. Walker (Va. S. C. A.):

102 Southeastern Reporter (April 25, 1920) 585.

Application—False Statements—Recovery:

Where the statements of insured in his application for policy of accident insurance as to the condition of health, habits, etc., were made honestly and truthfully and in accordance with the facts as he knew them, conditions at a post mortem examination did not defeat recovery.

Policy—Application—False Statements:

The provision in a policy of accident insurance that a right of recovery shall be barred if any one of the statements or representations of insured in his application, material to the acceptance of the risk assumed by the company, is false, is valid and binding, but to give it force, such statement must be untrue as of the time when made and it must be material as regard the acceptance of the risk or the hazard assumed by the company.

Application—False Statements—Evidence:

Statements of insured in his application in paragraph marked with a star referring to a foot note in which insurer specifies that statements are "only required for health insurance," though false were immaterial; the policy being for accident and not for health insurance.

Policy—Autopsy—Request:

Where a policy of accident insurance gives the company the right to have its medical examiner make an autopsy in case of death of insured, a request for such autopsy must be made of beneficiary within a reasonable time.

Action on Policy—Cause of Death—Evidence:

Evidence considered, that it was held that an automobile accident was the sole cause of insured's death, and that death was not caused by an overdose of morphine or by Bright's Disease.

[Judgment in accordance with opinion.]

O'Brien v. Columbian Nat. Life Ins. Co. (Me. S. C.):

109 Atlantic Reporter (April 29, 1920) 379.

Action on Policy—Accidental Injury—Evidence:

Where insured while riding a motorcycle passed through

a swarm of insects and one of them struck his eye with such force as to give him immediate and continued annoyance and finally resulted in blindness, such injury was accidental within the meaning of the policy.

Same—Notice of Accident—Estoppel:

Where insured accidentally injured in an eye, told the agent of the accident, was given a blank form of notice selected by the agent, filled out the blank and delivered the notice to insurer, which proved to be a blank for sickness instead of accident, and gave as his trouble, inflammation of the eye, the company was estopped to deny that because the first notice was erroneous, a subsequent notice on proper form was not seasonably filed.

Same—Same—Waiver:

Informalities in proof or notice of accident were waived by the retention thereof by insurer.

Same—Change of Occupation—Evidence:

Insured who was a bookkeeper did not change his vocation to that of a motorcycle rider where he was using his motorcycle for exercise and pleasure. Temporary diversion from employment stated in the policy is not an engaging in a more hazardous employment.

Policy—Exceptions—Statute:

Maine statute requiring conspicuous printing in an accident policy of any exceptions to a liability is not satisfied where the subject matter of any exception can be ascertained only by searching the parts of a so-called "red-book" in the office of the insurance commissioner embodying instructions to agents.

Action on Policy—"Entire Loss of Sight"—Evidence:

There was entire loss of sight of an eye within the meaning of an accident policy where insured was unable to distinguish one object from another in the strongest light, though he could discriminate flood of light from total darkness.

[Judgment for plaintiff below. Here affirmed against company.]

Tracey v. Standard Acc. Ins. Co. (Me. S. C.):

109 Atlantic Reporter (May 6, 1920) 490.

Policy—Contract—Construction:

An insurance contract, like other contracts, should be interpreted and construed to ascertain the meaning and intentions of the parties, and this will be reached by a consideration of the whole instrument.

Same—Same—Ambiguity:

It is only when the language in the contract is ambiguous that the rule obtains that it will be strictly construed against the insurer.

Same—Same—Words:

When words are used in one part of the contract and such

words are again used in the same contract, they are, as a general rule, deemed to have been used in the same sense as in the first instance, nothing to the contrary appearing.

Same—"Surgeon"—Definition:

Under a clause of accident policy authorizing recovery for death of a surgeon or dentist from blood poisoning after performing an operation, where other clauses of the policy excepted surgeons and veterinarians from certain restrictions, the word "Surgeon" must be given its popular meaning as one possessing knowledge and skill to correct and relieve some unnatural condition of the human body, and the clause does not authorize its recovery for the death of a veterinarian from blood poisoning resulting from inoculating a hog.

[Judgment for plaintiff below. Here reversed in favor of company.]

Maupin v. Southern Surety Company (Mo. C. A.):

220 Southwestern Reporter (May 12, 1920) 20.

Policy—Double Indemnity—Construction:

A combined accident policy issued to plaintiff as assured and his wife as beneficiary provided that it insured the beneficiary while riding as a passenger and further provided for double indemnity if "assured" should sustain injuries while a passenger. In an action by assured on the policy for the accidental death of his wife while a passenger, it was *Held*, That he could recover only the initial principal sum and not double indemnity, provision for double indemnity not applying to beneficiary.

[Judgment for plaintiff below. Here reversed in favor of company.]

Chicago Bonding & Ins. Co. v. Pulliam (Ky. C. A.):

220 Southwestern Reporter (May 19, 1920) 316.

Action on Policy—Contract—Warranties:

Where applicant warranted that his occupation was that of "advertising" and "soliciting and office work" and he was classed as a preferred risk, the provision of the policy as to service in the army, together with the warranties became a part of the contract and were binding upon insured.

Same—More Hazardous Occupation—Measure of Recovery:

Where insured in his application for policy insuring against death from accidental means, warranted his occupation to be that of "advertising" and "soliciting and office work" and the classification excluded army officers in field service and insured, while a commissioned officer in the United States army, was killed in battle, insurance benefits were recoverable only under the extra hazardous classification in, the amount fixed in accordance therewith.

[Judgment in accordance with opinion.]

Gillies v. Preferred Acc. Ins. Co. of N. Y. (N. Y., Sp. Tr., N. Y. Co.):

181 New York Supplement (May 24, 1920) 550.

Action on Policy—Fraud—Evidence:

In an action on policy of accident insurance, an allegation of misrepresentation by agent that the policy would become effective from the day of application, was not sustained by insured's testimony that the agent gave him to understand that he would secure more prompt action by sending his premium with the application but that the agent did not actually state that the policy would date from the application.

Same—Same—Burden of Proof:

The burden of proving agent's fraud in issuing and dating the policy as of a later date than application contrary to the representations of the agent was upon insured.

Policy—Issuance—Delivery:

Where the policy was not to become effective until its date of issuance, negligent delay by the insurance company in approving the application and writing the policy created no liability to insured who became ill within 15 days after the date of the policy, so that there was no liability under its terms.

[Judgment for plaintiff below. Here reversed in favor of association.]

Inter-state Business Mens' Acc. Assn. v. Nichols (Ark. S. C.):

220 Southwestern Reporter (May 26, 1920) 477.

Action on Policy—Notice of Claim—Validity:

A requirement in a health insurance certificate requiring that insured should give notice of his claim within seven days after his disability accrues and within 30 days after recovery is void.

[Judgment for plaintiff below. Here affirmed against society.]

Independent Order of Puritans v. Manley (Tex. C. C. A.):

220 Southwestern Reporter (May 26, 1920) 647.

Action on Policy—Prepayment of Premium—Waiver:

The unconditional delivery of a policy of insurance is not only a waiver of a prepayment of any premium provided for therein but it is prima facie proof that such premium has in fact been paid.

Same—Proof of Death—Waiver:

In an action on policy by pleading to the declaration on the merits without mentioning the want of proof of death of insured, the defendant waives the making of such proof, such a waiver is in the nature of an estoppel in pais and may be proven without being pleaded.

Same—Representations—Warranties:

Where it is doubtful whether the statements in an application for insurance are representations or warranties they will be deemed to be representations, warranties not being favored because they must be literally fulfilled.

Same—Other Insurance—Benefit Society:

The Modern Woodmen of America is a benefit society and

not an insurance company in the sense that membership in it is regarded as a violation of a covenant not to take other insurance.

[Judgment in accordance with opinion.]

Briggs v. Bankers Acc. Ins. Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (May, 1920) 7.

Action on Policy—Weekly Benefit—Measure of Recovery:

Policy provided for weekly benefit of \$5.00 limited to 20 weeks in any 12 calendar months. Insured was injured in March, 1916, and received in March and April five weekly benefits. Insured again was injured September 21, 1916, and from September 29, to January 8, 1917, received 14 weekly benefits. In an action on the policy it was *Held*, That insured was not entitled to 20 benefits beginning March 26, 1917, if disabled for such time irrespective of payments from September, 1916, to and including January, 1917, and despite statement of insurer in January, 1917, that he would not be entitled to more benefits until March.

[Judgment for plaintiff below. Here affirmed conditionally on plaintiff's tendering remittur.]

Empire Health & Acc. Ins. Co. v. Chatman (Ind. App.):

127 Northeastern Reporter (June 1, 1920) 159.

Action on Policy—Change of Occupation—Evidence:

Insured who was described in his application for insurance as a foreman having supervising and overseeing duties only did not change his occupation by cutting an electric wire while with a gang of linemen instructing them how to perform the work.

Same—Same—Same:

Where the policy provided for reduction of indemnity if the injury was sustained while doing any act or thing pertaining to any occupation classed as more hazardous than that therein stated, the cutting of an electric wire by insured who was a foreman was not an act requiring reduction of the indemnity, notwithstanding it pertained to a more hazardous business than that of foreman where it was also in the line of insured's employment as foreman as such policy provision applied only to hazardous acts of another occupation not pertaining to his own occupation.

[Judgment for plaintiff for insufficient amount. New trial granted.]

Smith v. Massachusetts Bonding & Ins. Co. (N. C. S. C.):

102 Southeastern Reporter (June 5, 1920) 887.

Action on Policy—Payment—Vexatious Delay:

Insurer is not liable for attorney's fees and penalty for vexatious delay for refusing to pay on demand because of a question of insurance law which had been and was at the time of the demand a mooted question in the state.

Same—Pleading:

In an action on a policy of accident insurance an alternative plea that insured met his death as a result of an acci-

dental discharge of a shotgun or that the gun was discharged by him with intent to commit suicide is bad, being in the alternative, as one averment would entitle the beneficiary to recover and the other not.

Same—Suicide—"Accident":

If insured met his death by intentional suicide while sane there could be no recovery under a policy insuring him against accidental death, such death not being an "accident."

Policy—Proof Requirement—Validity:

The provision in an accident insurance policy providing that if insured receives bodily injury fatal or otherwise from the discharge of fire arms the claimant shall establish the accidental character of the injury by the testimony of at least two eye-witnesses, other than the insured, is invalid because it infringes on the province of the court in determining what mode of proof shall be required.

[Judgment in accordance with opinion.]

Rollins v. Business Men's Acc. Assn. of America.
(Springfield C. A., Mo.):

220 Southwestern Reporter (June 9, 1920) 1022.

Action on Policy—False Statement—Application—Recovery:

Where the application for policy of health insurance was annexed to and formed part of the contract of insurance under New York insurance law and was signed by the insured, a material false statement therein that insured had not had any medical or surgical treatment during the preceding five years precluded recovery on the policy though insured was unable to read or write English well and had informed soliciting agent who furnished the policy of his illness during such period.

[Judgment for plaintiff below. Here reversed in favor of company.]

Stanulevich v. St. Lawrence Life Assn. (N. Y. S. C.):

127 Northeastern Reporter (June 15, 1920) 315.

Action on Policy—Premium Note—Contract:

"This obligation is not a part of the policy of insurance but is a separate contract," printed under insured's signature to a premium note should be disregarded as the note and policy each refers to the other and concerns the same subject matter, constitutes but a single contract under California Code and such clause contradicts the express terms of the note as signed.

Same—Contract—Construction:

Where there is a doubt as to the meaning of a contract of insurance, it is to be construed in the sense in which the insurer believed at the time of making it, that the insured understood it, under California Civil Code, Sec. 1649.

Policy—Ambiguity—Construction:

If an insurance contract is ambiguous it must be construed against insurer.

Same—Forfeiture—Waiver:

Insurer under a policy of accident insurance, where assured gave a note for five annual premiums, waived any rights under a forfeiture clause providing that certain accidents would not be compensated when occurring after maturity of installment for annual premium, where it sent letters to insured indicating an intention to collect the full amount of the installment due for which the insured was entitled to insurance for the year.

[Judgment for plaintiff below. Here affirmed against company.]

Kelly v. Great Western Acc. Ins. Co. (Cal. D. C. A.):
189 Pacific Reporter (June 21, 1920) 785.

Policy—Weekly Physician's Certificate—Waiver:

Where an accident insurer refused to make further weekly payments to insured, claiming he was no longer disabled, it thereby waived the provision of the policy requiring insured thereafter to furnish a weekly physician's certificate called for by the policy.

[Judgment for plaintiff below. Here affirmed against company.]

Redd v. National Life & Accident Ins. Co. (St. Louis. C. A., Mo.):
221 Southwestern Reporter (June 23, 1920) 397.

Action on Policy—Condition Precedent—Waiver:

The provision of an application for policy of accident insurance making payment of premium a condition precedent to the taking effect of the policy was waived by the agent's agreement with insured that the taking effect of the policy was not to await payment of premium but that premium was to be paid when called for by the local agent, and by insurer's charging the local agent with the portion of the premiums due it after deducting his commission on issuing the policy.

Same—Policy—Delay:

Actual delivery of a policy is not generally necessary to complete the contract; the contract being consummated on the acceptance of the application, unless otherwise provided by contract.

Policy—Mailing—Delivery:

The deposit of the policy in the mail, addressed to the insured, is a delivery to him, the postal authorities being considered the agent of the insured for the transmission of the policy to him.

Same—Delivery Provision—Validity:

The provision in the contract that the policy could not be given effect until actually delivered is valid.

Same—Application—Consummation of Contract:

Under an application for accident insurance policy giving insured three days after receipt of policy in which to examine and reject it without requiring that his assent be in-

dictated in any particular way, insured's statement to the agent, upon the submission of the application that he had examined and was satisfied with the sample, would accept the policy without further examination and had directed his clerk to pay the premium to the local agent on demand, was a waiver of such provision of application so that the contract was complete upon delivery of the policy to the mails directed to insured's address.

[Judgment for plaintiff below. Here affirmed against Assn.]
Edwards v. Business Men's Acc. Assn. of America
(Springfield C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 422.

Annotation—Accident Insurance: Scope and Effect of Provision as to "Riding or Driving Races."

Under the above heading appears an annotation to the case of *Swanbrough v. Order of United Commercial Travelers of America*, reported in 181 Pacific Reporter 204; 6 American Law Reports 485.

Action on Policy—Pleading:

A petition alleging an injury on August 28, from which infection resulted and caused the confinement of petitioner in a hospital beginning from September 10, failing to allege that the disability was immediate or continuous after the injury or that it resulted exclusively from the injury does not entitle insured to recover the benefits provided by an accident policy for immediate and continuous disability resulting solely from accidental injuries.

[Judgment for plaintiff below. Here set aside and suit dismissed.]

Feitel v. Fidelity & Casualty Co. of New York (La. S. C.):
84 Southern Reporter (June 26, 1920) 491.

Action on Policy—Cause of Injury—Burden of Proof:

Under an accident policy insuring against death "by reason and in consequence of a burning of a building while the beneficiary is therein," the burden was upon the plaintiff to prove what caused insured's death, where caused by the burning of the whole or a part of the building.

Same—Same—Evidence:

In an action on a policy insuring against death "by reason and in consequence of a burning of building while the beneficiary is therein," evidence that beneficiary's clothes caught on fire while in the building and that there had been a fire in the kitchen of such building which had resulted merely in the burning of some of the contents of the room and charring of wall paper and the scorching of window frames and which had been extinguished by hand extinguishers by members of the fire department in a few minutes and that the beneficiary had been cleaning gloves with gasoline at the time of fire, *Held*, Not to warrant the inference that death was caused by burning of building.

[Judgment for plaintiff below. Here reversed in favor of company.]

Chreiss v. Aetna Life Ins. Co. (N. Y. C. A.):

127 Northeastern Reporter (June 29, 1920) 481.

Action on Policy—Accidental Injury—Defense:

Where insured was injured in an accident and such injury resulted in paralysis and death, the fact that he had had a prior stroke of paralysis is no defense in an action on his accident policy, but the fact of the prior stroke of paralysis and the insured's predisposition thereto would be significant in its bearing upon the question of accidental injury.

Same—Same—Evidence:

In an action on an accident policy there can be no inference that, because insured was exhausted by his night's work as mail clerk he suffered an accidental wrench, strain or shock from lifting burdens he was accustomed to handle.

Same—Cause of Death—Burden of Proof:

In an action on an accident policy the burden of proof is upon the beneficiary to prove that insured's death was the result of an accident.

Same—Same—Jury:

In an action on an accident policy where the evidence showed that insured either died from disease or from an accident, but not showing that accidental death was the cause rather than death from disease was no question for the jury.

[Judgment for society below. Here affirmed in favor of society.]

Atherton v. Railway Mail Assn. (Kansas City C. A., Mo.):
221 Southwestern Reporter (June 30, 1920) 752.

Action on Policy—"Common Carrier"—"Public Conveyance"—Definitions:

The Taxicab Company and a taxicab were held respectively a "common carrier" and a "public conveyance" with an accident policy providing for double indemnity for bodily injury "while in or on a public conveyance provided by common carrier for passenger service"; a common carrier of passengers being one who undertakes for compensation to transport all who may choose to employ him.

[Judgment in accordance with opinion.]

Anderson v. Fidelity & Casualty Co. of New York (N. Y. C. A.):

127 Northeastern Reporter (July 6, 1920) 584.

Policy—Intentional Injuries—Evidence Considered:

In the body of the policy it was provided that in the event of death from injuries "intentionally inflicted upon the assured by himself, or by any other person, the amount of recovery should be 20 percent of the face of the policy. On the back of the policy was the following provision: "This policy, subject to its conditions, covers over 2,500 diseases * * * it also covers all bodily injuries caused solely by accidental means such as * * * injuries inflicted by robbers and highwaymen." The insured was killed by a robber who entered his store. After insured had held up his hands at the command of the robber, an employe of the store who

had not observed the robber approached from the rear; when the robber became aware of the presence of such employee, he shot the insured below the left eye, from which wound death resulted. *Held*, That the provision on the back of the policy was controlled by the condition in the body of the policy and that the finding of the trial court that the death was due to injuries intentionally inflicted by the robber was supported by the evidence.

[Judgment for company below. Here affirmed in favor of company.]

Hessler v. Federal Casualty Co. (Ind. App.):

127 Northeastern Reporter (July 13, 1920) 620.

Policy—Total Disability—Evidence Considered:

The testimony tended to show that the insured was entirely unable to give attention to business and that he merely went down to his place of business from time to time to attend to business to a very limited extent. *Held*, That this evidence was sufficient to warrant the finding that the insured was prevented from "performing every act of business" within the meaning of the policy.

Same—Confinement to House—Contract Construed:

The policy provided for indemnity only while the insured was compelled to "remain continuously and strictly within the house * * * under the constant treatment of a regular physician." *Held*, That if a disease were of such character as to require insured to remain outside of the house rather than in it, there would be no liability, but short trips away from the house for purposes necessary to bring beneficial results to the health of the insured would not take the case out of the operation of the language of the policy requiring confinement to the house.

Same—Same—Question for Jury:

The evidence tended to show that the insured was ill with nephritis; that he sold out his business on the advice of his physician and went to a certain watering place for the benefit of his health. *Held*, That while there he was under the constant care of a physician; that he made daily trips to the post office to get his mail and made trips to the wells about four squares from where he lived twice a day. That he occasionally sat at the wells for half an hour at a time; that he would sometimes stop at the stores and make purchases and that while he was at home he spent much of his time sitting out on the porch. His physician testified that fresh air and sunshine was most beneficial for insured's health. *Held*, That under the evidence it was a question for the jury as to whether or not the insured's state of health required continuous confinement to the house.

[Judgment for plaintiff below. Here reversed in favor of association.]

Inter-State Business Men's Acc. Assn. v. Sanderson.

(Ark. S. C.):

222 Southwestern Reporter (July 14, 1920) 51.

Policy—"Any Kind of Gas":

The policy provided for the payment of a reduced amount in case of "asphyxiation by any kind of gas." *Held*, That the words quoted are unambiguous; the word "any" has a well defined meaning and the clause was not to be limited to such gases as are commonly understood and referred to in common parlances; it included gases such as arise incidentally from an accidental fire and it was error for the trial court to refuse an offer to prove that death was produced by asphyxiation caused by the inhalation of carbon dioxide and carbon monoxide two gases the product of combustion occurring in a fire.

[Judgment for plaintiff below. Here reversed in favor of society.]

Harrington v. Interstate Business Men's Acc. Ass'n.
(Mich. S. C.):

178 Northwestern Reporter (July 16, 1920) 19.

Policy—Injury Resulting from Explosives—Voluntary Exposure:

A policy providing "this insurance shall not cover * * * death * * * from any of the following, to-wit: Voluntary over exertion or voluntary exposure to unnecessary danger * * * or freezing, fire arms, fire works, or explosives of any kind." The insured, while riding in a passenger car was injured when a violent explosion in the toilet room occurred by which the car was wrecked. *Held*, That the clause quoted could not be construed to apply only to the voluntary exposure to explosives. The punctuation as well as the context removed the clause from the operation of the words "voluntary exposure."

Same—Injury Caused by "Wreckage":

The policy also contained a clause providing for double indemnity if "injury shall be caused by the wreckage or burning of a railway passenger car." Explosion occurred in the toilet room of the car in which insured was riding and the insured was injured by the wreckage of the car thus caused. *Held*, That the injury was the result of the wreckage and that the company was liable for the double indemnity notwithstanding the provision for limited liability for injury due to explosion.

Same—Measure of Recovery—Duplicate Policies:

The insured had two ticket policies which overlapped at the time of injury. Each contained the provision "insurance on any person under ticket policies is limited to the principal sum," etc. *Held*, That the company was liable only for the amount of one policy plus the premium received on the other.

Action on Policy—Custom—Estoppel:

It is claimed that the company was estopped from denying liability on both policies because of a custom of issuing as many separate policies as might have been requested. In proof of the custom, testimony was given that the witness

purchased four policies, which overlapped, in December, 1917. *Held*, That this was not sufficient to prove a uniform custom in June, 1916, at which time, the plaintiff's policies were issued, nor was it sufficient to prove an estoppel without a showing that the conduct of the plaintiff was in some manner influenced thereby.

[Judgment for plaintiff below. Here modified and affirmed against company.]

Wilson v. Travelers' Ins. Co. (Cal. S. C.):

190 Pacific Reporter (July 19, 1920) 366.

Policy—"Voluntary or Unnecessary"—Construction:

The laws of the society excepted death caused by "voluntary or unnecessary exposure to danger or too obvious risk of injury." *Held*, That "voluntary" and "unnecessary" are each adjectives and as used to modify "exposure." Each word carries an idea entirely separate and distinct from the other and the conjunction "or" cannot be construed as coordinating.

Same—Exposure—Contract Construed:

The expression "or too obvious risk of injury" is not to be construed as coordinate with "exposure to danger."

Same—Rule of Construction:

Each and every word, phrase, clause and sentence in a contract is supposed to have been used for a certain and definite purpose and as having some force and meaning.

Same—Same:

An insurance contract, being prepared by the insurer, if ambiguous, will be construed most favorably to the insured.

Same—Voluntary Exposure—Construction:

While walking upon a railroad track would be an exposure to danger, whether or not such act would constitute a voluntary exposure to "too obvious risk of injury" would depend upon whether a reasonably prudent man, under like circumstances would have voluntarily encountered such risk.

Same—Same—Question for Jury:

Whether the insured who walked on the railroad tracks, under the circumstances in this case, exposed himself to a risk that no reasonably prudent man would have assumed, was a question for the jury.

[Judgment for plaintiff below. Here affirmed against association.]

Traveler's Protective Ass'n. v. Jones. (Ind. App.):

127 Northeastern Reporter (July 20, 1920) 733.

Action on Liability Policy—Notice—Sufficiency of Complaint:

The complaint alleged that the insurance company had knowledge of the accident within five days after it occurred but failed to give assured any information with reference to it and that assured had no knowledge thereof or of any claim for damages until served with summons; that two days after receipt of summons it gave the insurance com-

pany written notice of said accident and of the bringing of said suit and forwarded to it the summons served and a copy of the complaint. *Held*, That these averments were sufficient to make the complaint good against the insurance company's demurrer which presented only the question of notice.

Same—Same—Evidence Considered:

The insured's manager, at the time of sending in the complaint writes a letter in which he stated that he had been advised of the accident some two months after it happened. On the trial the manager testified that in writing the letter he had confused the statements made by the injured party with the averments of the complaint; that as a matter of fact, the injured person had said nothing to him about the injury but had only made inquiry as to the legal right of assured to construct anchors for their poles. It was over one of these anchors that the injured person had fallen; this testimony of the manager was corroborated by the injured person. The jury answered an interrogatory to the effect that the manager did not within six months after the injury have knowledge of it. *Held*, That the foregoing testimony supported the jury's answer.

Same—Failure to Defend—Measure of Liability:

Having refused to defend the action brought against the assured, thus breaking its contract the insurance company could not challenge the assured's conduct of the defense in the absence of fraud so as to preclude assured from recovering expenses of the defense including costs and expenses of appeal.

[Judgment for plaintiff below. Here affirmed against company.]

Frankfort Marine, Accident & Plate Glass Ins. Co. v. Lafayette Telephone Co. (Ind. App.):

127 Northeastern Reporter (July 27, 1920) 832.

Policy—Notice—Excuse:

The fact that physicians who attended insured attributed his condition to disease rather than accident does not excuse failure to give notice as required by the policy.

[Judgment for company below. Affirmed on appeal to C. C. A. Here affirmed.]

Hefner v. Fidelity & Casualty Co. (Tex. S. C.):

222 Southwestern Reporter (July 28, 1920) 966.

Policy—Rule of Construction:

The law of the state in which a policy has been issued and delivered and in which the insured was a resident at all times are to be followed in construing the contract.

Same—Cause of death—Burden of Proof:

Under the law of California the burden rests upon the beneficiary to prove that the incident claimed to have been the cause of insured's death; that it was not intentional but accidental; and that this accidental injury resulted in death "direct and independent of all other causes."

Same—Same—Evidence Considered:

Insured was afflicted with a cancer of the liver. There was evidence tending to show that the insured while playing golf and while in the act of making a stroke was thrown off his balance by catching his foot in something so that he almost fell; there was evidence tending to show that the strain caused a rupture which was the immediate cause of death, but that the rupture would not have occurred but for the existence of the cancerous tumor. *Held*, That the death was not the result of accidental means "independent of all other causes."

[Judgment for company below. Here affirmed in favor of company.]

Campbell v. Aetna Life Ins. Co. (Mo. S. C.):

222 Southwestern Reporter (July 28, 1920) 778.

Policy—Accidental Injuries—Evidence Considered:

The policy insured against loss "effected solely through external, violent and accidental means." Insured submitted to an operation for hernia. While sewing up the incision, the surgeon's needle pricked an artery. This artery was not exposed to view, the surgeon used his needle in the usual way and put it exactly where he intended to put it. The insured's artery was not where such arteries are in the usual man because of which it was touched by the surgeon's needle. Sometime after the operation one of the insured's legs became gangrened and he suffered an operation. There was evidence to show that the cause of this condition was the pricking of the artery. *Held*, That this loss fell within the terms of the policy. The hernia was not a cause which produced or contributed to the pricking of the artery but a condition which exposed insured to that possibility.

[Judgment for plaintiff below. Here affirmed against company.]

Aetna Life Ins. Co. v. Brand (U. S. C. C. A.):

265 Federal Reporter (August 19, 1920) 6.

Policy—Occupation—Evidence Considered:

Where a person, classified for insurance as a farmer, makes a trip accompanying stock in shipment, which he has sold before shipment to another party, *Held*, That such trip does not constitute such a substitution of one occupation for another that it can be said that he has changed his occupation from a farmer to a "shipper tending stock," within the meaning of a clause in an insurance policy, providing reduced benefits in case insured changes his occupation to a more hazardous one.

Same—Same—Same:

When such person is killed in a wreck during the shipment, but while he is riding in a caboose, where other passengers are allowed to ride who have regularly paid their fare, *Held*, That at the time of accident, the insured, not being engaged in any duties peculiarly pertaining to those of a tender of stock, but being subjected to those hazards only which are common to the other passengers in the car,

was not performing any act or thing pertaining to the more hazardous occupation.

Same—Construction—Punctuation:

Though punctuation marks may be considered as an aid to the interpretation of an insurance policy, they will not control, nor change a meaning which may be plainly gathered from the words and their arrangement.

Same—"Passenger Car"—Caboose:

When a caboose, attached to a train carrying live stock, is used as an essential part of the freight train, for the purpose of carrying the train crew and the caretakers of live stock, *Held*, Not to be a passenger car provided for the exclusive use of passengers, though a few passengers, in the strict sense of the term, have been permitted to ride upon it.

[Judgment for plaintiff below, for less than demanded. Affirmed on appeal. (173 Northwestern Reporter 693.) On motion for rehearing former judgment adhered to.]

Zantow v. Old Line Acc. Ins. Co. (Neb. S. C.):

178 Northwestern Reporter (August 20, 1920) 501.

Suicide—Statute—Constitutional Law:

Sec. 6945 R. S. Mo. 1909, declaring that suicide shall not be a defense in suits upon life insurance policies, is not unconstitutional as abridging the right of contract. It was within the power of the Legislature to prescribe the manner and condition under which insurance companies could transact business and as a part of such power it could lawfully enact such a statute.

Same—Same—Public Policy:

It was within the discretion of the Legislature to enact such a law and in determining its validity, the courts will not consider the contention that it placed a premium on suicide and that it was inimicable to public welfare and to public morals.

Same—Same—Nature of Contract:

Defendant company described itself as operating on an assessment plan within the provisions of Art. 3, c. 61, R. S. Mo. 1909. Sec. 6950 R. S. 1909 defines a contract upon the assessment plan as one where the payment of the benefit is in "any manner or degree dependent upon the collection of an assessment upon persons holding similar contracts." The policy of the defendant provided for the payment of a fixed sum in consideration of the payment of certain fixed assessments. *Held*, That the contract was to be treated as an "old line" contract and that the defendant was not exempt from the provisions of the suicide law.

Same—Question for Jury:

The policy insured against death "through external, violent and accidental means." In the petition it was alleged that the insured's death was caused by "accidental means, to-wit: by the drinking of carbolie acid." The answer of the Association alleged that he "died as a result of drinking

carbolic acid with suicidal intent." In a letter written by the claimant's attorney, it was stated that insured "came to his death by carbolic acid self-administered by him for the purpose of ending his life, or, in other words, committed suicide." The coroner's report showed death from the same cause "self-administered." The attending physician and another person in the proofs of death stated death to be due to carbolic acid poisoning. *Held*, That this evidence did not prove conclusively that the insured took carbolic acid with the intention of committing suicide. While the admission in the letter of the attorney would be evidence tending to show that it was taken intentionally, it would not be conclusive of that fact, and if it were proven that he took it intentionally that would not be conclusive that he was sane at the time. Whether or not the death was the result of suicide while sane was for the jury.

Action on Policy—Cause of Death—"Accidental":

Where a result is produced by means unexpected, unintentional and unanticipated, it is accidental; but if the act and the results produced are exactly what was in accordance with the intention of the actor, it was not accidental. In this case, if the insured was sane and consciously intended to inflict death upon himself then the death was not accidental.

Same—Same—Insane Acts:

If the insured committed suicide while insane, his beneficiary could recover.

Same—Suicide—Accident:

If the insured, while sane, for the purpose of committing suicide, intentionally swallowed poison, his consequent death was not accidental.

Same—Same—Presumption:

If the insured swallowed poison and the question arose whether the act was accidental or intentional, a presumption arose from the love of life in the absence of evidence upon the point that it was accidental, and this presumption obtains until evidence is adduced in explanation of the act.

Same—Same—Question for Jury:

If there is evidence explaining the manner in which the poison was taken, then the presumption would cease to exist and it would become a question of fact whether the death, self-inflicted, was accidental or intentional.

Same—Same—Burden of Proof:

The burden is upon the company in such a case to prove that the death was intentional and not accidental. In other words, the company would have the burden of proving that the insured was sane and committed the act which took his life with the intention of committing suicide.

Same—Nature of Contract—Age of Insured:

Where an assessment company issues an old line policy it is not entitled to the benefit of the statutory provision

limiting the age of the policyholders in an assessment company to more than 60 years.

[Judgment for plaintiff below. Here reversed in favor of association.]

Andrus v. Business Men's Accident Assn. of America
(Mo. S. C.):

223 Southwestern Reporter (August 25, 1920) 70.

Policy—Notice—Death of Beneficiary:

While the beneficiary did not know immediately after the accident, the exact facts concerning the manner in which the insured had met his death, where she was within a reasonable time after his disappearance while hunting, fully convinced of his death, either she or someone for her should have given the required notice to the company.

Same—Same—Informal Notice to Agent:

In the absence of proof that the facts related were communicated to the home office, notice to the local agent during an informal conversation, shortly after the disappearance of the insured, could not under any circumstances, be held to meet the requirements of the policy that immediate notice be given to the "company at its home office."

Same—Same—Forfeiture:

The giving of notice and the forwarding of affirmative proof of death are two separate and distinct obligations. While the proof could not be made until after the discovery of the body and a determination of the cause of death, the fact of the accident, with its attendant circumstances which, were known to the beneficiary within a few days after insured's disappearance while hunting should have been communicated to the company.

Same—Waiver—Authority of Agent:

Where a policy contains a provision against waiver by an agent, it is both notice and agreement by the policyholder that no agent has authority to waive the condition.

Same—Same—Waiver:

The insured disappeared in November, 1910, while hunting. His body was found in October, 1913. After the discovery of his remains the plaintiff notified the local agent in writing and requested instructions. The letter was forwarded to the company and it responded that the conditions were such "that it would appear that no claim exists." Plaintiff replied advising that the facts as to the disappearance were verbally communicated to the agent soon after the disappearance. The company thereafter wrote that it was impossible to determine whether the question fell within the terms of the policy; that the condition of the policy had not been complied with and furthermore that the action of the company should not be construed as a waiver. *Held*, That these communications of the company could not be construed as a waiver of failure to comply with requirements in policy.

Same—Cause of Death—Burden of Proof:

The burden of proof was upon plaintiff to show, not only the death of the insured but also that the death was caused by injuries sustained by the insured by external, violent and accident means within the meaning of the policy.

Same—"Accident":

There is a distinction between accidental death and death by accidental means. The word "accident" means an event which takes place without one's foresight or expectation. Death resulting from voluntary physical exertion or from intentional acts is not accidental.

Same—Cause of death—Presumption:

While there is no presumption that a man found dead has been murdered or has committed suicide, it is equally true that no presumption can be indulged in that he met death by external, violent and accidental means.

Same—Same—Evidence Considered:

Insured left a hunting camp in a heavy snow storm following the trail of an elk; he had been reared in the mountains; the weather was not cold enough to freeze a man; several years after his body was found two miles from camp, though insured would have had to walk five miles in order to reach the spot, a distance which could not have exhausted him; there was no place from which he could have fallen to his death; the rifle he carried on leaving camp was not with his remains, his automatic pistol was still in his pocket. At the time the body was found it was impossible to ascertain whether or not there were any marks of violence upon the body. *Held*, That the burden of showing a death by accidental means had not been sustained.

[Judgment for plaintiff below. Here reversed in favor of company.]

Tuttle v. Pacific Mutual Ins. Co. (Mont. S. C.):

190 Pacific Reporter (August 30, 1920) 993.

Action on Policy—Accidental Means—Killed in Battle:

The policy insured against injuries effected solely through external, violent and accidental means. The insured was injured in battle by an explosion of a shell fired from a gun of the enemy. *Held*, That the injury so caused was not covered by the policy.

[Judgment for company below. Here affirmed in favor of company.]

Martin v. Peoples Mutual Life Ins. Co. (Ark. S. C.):

223 Southwestern Reporter (September 1, 1920) 339.

Policy—Eye-Witnesses—Validity of Contract:

The policy provided that there should be no liability in certain stated cases "unless the claimant shall establish the accidental character of the injury by a person other than the member or the claimant who was an eye-witness of all the circumstances of the casualty." *Held*, That this provision did not contravene any rule of public policy.

Public Policy—How Determined:

Where the question of public policy is raised, it is the public policy in force where the action is brought that controls. This public policy is not controlled by the constitution, treaties or laws of the United States, or by the principals of the commercial or mercantile law or by general jurisprudence is governed by the laws of the state as disclosed by the constitution or statute or by the decisions of its highest courts.

Policy—Waiver—Evidence Considered:

The denial by the association that "the loss is not covered by the policy" was a denial of liability generally under the certificate and could not be relied upon as evidence of a waiver of the condition requiring proof by an eye-witness in certain stated cases.

[Judgment for Association below. Here affirmed in favor of Association.]

Becker v. Interstate Business Men's Acc. Assn. of Des Moines, Ia. (U. S. C. C. A.):

265 Federal Reporter (September 2, 1920) 508.

Death—"Accident":

Death through injury to gum, caused by pulling a tooth which made port of entry for bacteria into the circulatory system and directly resulted in blood poisoning, was not within an accident policy insuring against "bodily injury through accidental means exclusive of all other causes."

[Bill dismissed below. Here affirmed in favor of company.]

Ramsey v. Fidelity & Casualty Co. (Tenn. S. C.):

223 Southwestern Reporter (September 22, 1920) 841.

Action on Policy—Suicide—Statute:

Missouri statute providing that in action on life insurance policy, it shall be no defense that insured committed suicide in absence of showing that he contemplated suicide at time of application for policy, does not apply to an action on a policy of accident insurance in case the insured committed suicide while sane, for in such case insured would not have been injured by an accident and there would be no liability under the policy.

[Judgment in accordance with opinion.]

Trembley v. Fidelity & Casualty Co. of New York (Mo. S. C.):

223 Southwestern Reporter (September 29, 1920) 887.

Action on Policy—Misrepresentation—Return of Premium:

In an action on a policy of accident and health insurance, insurer could not defend on ground of fraudulent representation in procuring the insurance where it had not offered to return to insured the premium paid.

Policy—Ambiguity—Construction:

When the language of an insurance contract is capable of two interpretations, the one must be adopted which is most favorable to the assured.

Same—Same—Same:

Where an accident and health policy insured from illness for a period not exceeding 52 weeks, stating the insurer "does hereby insure," such general language in the policy was not limited by a subsequent clause exempting insurer from liability for illness contracted within fifteen days from day of policy.

Action on Policy—Vexatious Refusal to Pay Loss—Jury:

In an action on a combination accident and health policy, the question of vexatious refusal of company to pay loss was for the jury.

[Judgment for company below. Here reversed against company.]

Drucker v. Western Indemnity Co. (St. Louis C. A., Mo.):
228 Southwestern Reporter (September 29, 1920) 989.

Action on Policy—Cause of Death—Evidence:

In an action on policies of accident insurance where insurer alleged that a body found was not the body of insured, the amounts and circumstances of the policies were proper evidence as bearing on the question of fraud.

Same—Same—Same:

In an action on a policy of accident insurance, the evidence sustained finding that the body of one burned in a house was that of insured and not a dead body placed there by insured and that death was accidental.

[Judgment for plaintiff below. Here affirmed against company.]

Ensign v. Travelers Ins. Co. (N. Y. S. C., App. Div.):
184 New York Supplement (October 18, 1920) 7.

Annotation—Death or Injury Resulting from Insured's Voluntary Act as Caused by Accident or Accidental Means:

Under the above heading appears annotation to the case of Lewis v. Ocean Accident & Guarantee Corp., heretofore reported in 31 Insurance Digest 300.

7 American Law Reports 1129.

Annotation—Presumption and Burden of Proof as to Accident in Case of Death from Poison:

Under the above heading appears the case of Brunswick v. Standard Ins. Co., reported in 213 Southwestern Reporter 45.

7 American Law Reports 1213.

MARINE INSURANCE

Marine Insurance—Unrepaired Damage—Subsequent Total Loss—Merger:

By a time policy the plaintiffs insured their vessel with the defendants against marine risks only, but including particular average. The vessel was under charter to the Admiralty on the T. 99 form, under which the Admiralty contracted to pay for loss by war risk, the value to be ascertained at the date of the loss. During the currency of the policy the vessel sustained damage by marine risks; the damage was not repaired but it depreciated her value by £1,770. On a subsequent voyage, but during the currency of the policy, the vessel became a total loss by war perils, and the Admiralty in consequence of the unrepaired damage paid the defendants £1,770 less than they would otherwise have done. The plaintiffs claimed to recover from the defendants their proportion of the £1,770. *Held*, That as the unrepaired damage was followed by a total loss during the currency of the same policy the smaller loss merged into the larger, and therefore the defendants were not liable for the unrepaired damage notwithstanding the fact that the liability for the total loss did not fall upon them.

[Judgment for company.]

Wilson Shipping Co. v. British and Foreign Ins. Co.,
Ltd. (K. B. Div.):

(1919) 2 K. B., The Law Reports (December) 643.

Marine Insurance—War Risk—"Warlike Operations":

By a time policy a steamship was insured against war risks. The material clause in the policy insured the vessel against "all consequences of hostilities or warlike operations by, or against, the King's enemies." By another time policy the steamship was insured against the usual marine perils, including perils of the seas. The policy contained an f.c. and s. clause, the material words of which were "warranted free from * * * * all consequences of hostilities or warlike operation * * * *". During the time covered by the policies of the steamship, one of the four merchant steamships carrying cargoes of cotton, while proceeding under convoy ran upon a reef of rocks and became a total wreck. The vessels were zigzagging, the night was dark, they were upon an unaccustomed course, and the currents were variable and unknown direction and force. The master was under the orders of a King's officer and was not responsible for the course taken. His business was to keep his position relatively to the other three ships. There was no negligence proved either on the part of the master or the King's Officer: *Held*, that there was no "warlike operations" of which it could be said that the loss of the ship

was the consequence, and that the loss fell upon the marine risk underwriters.

British India Steam Navigation Company v. Green & Others and Liverpool & London War Risks Insurance, Ltd. (K. B. Div.):

(1919) 2 K. B., The Law Reports (December) 670.

Marine Insurance—Policy—Constructive Total Loss:

A ship was insured by the plaintiffs with underwriters by an increased value policy of marine insurance in the sum of £3,000 against total or constructive total loss by the usual perils of the sea. The policy contained the following clause: "No vessel insured in this association shall be deemed to be a constructive total loss unless the cost of repairing the damage caused by perils insured against shall amount to 80 percent of the value in the ordinary hull 'all risks' policy, say—£12,500." The form of the policy provided for a valuation of the vessel, but this was left blank. The vessel was also insured with underwriters in the sum of £12,500 by an ordinary hull "all risks" policy. The ship met with damage from perils insured against. The estimated cost of repairs exceeded 80 percent of £12,500—namely, £10,000—but was very much less than the repaired value of the ship, which was about £25,000. The plaintiffs claimed under the increased value policy as for a constructive total loss of the ship: *Held*, That the parties had not by the insertion of the clause in the policy substituted the agreed figure of £10,000 for the repair value of the ship, in ascertaining whether the ship was a constructive total loss, but that the vessel was to be deemed a constructive total loss if the cost of repairs exceeded the value of the ship when repaired with a proviso that the cost of repairs must amount to 80 percent of the value in the ordinary hull "all risks" policy.

Sailing Ship Holt Hill Company v. United Kingdom Marine Association (K. B. Div.):

(1919) 2 K. B., The Law Reports (December) 789.

Marine Insurance—Loss—Absence of Marine Risk:

The appellants hired from the respondents for two years a dry-dock to be used afloat in construction work on caissons at Victoria, British Columbia. By the hiring agreement the appellants admitted that the dry-dock was seaworthy and fit for the work contemplated, and agreed to keep it insured for the benefit of the respondents for \$75,000, against marine risks and to redeliver it in equally good condition save for wear and tear. While the dry-dock was being used in harbor for the contemplated work it capsized and was totally lost; the accident was due to its inherent unfitness for the work, and not to any condition of the wind or sea. The appellant had failed to insure the dry-dock as agreed; its value was only \$34,500: *Held*, That the loss was not due to a marine risk, and that consequently the respondents

were not entitled to recover as damages \$75,000, but only \$34,500.

[Judgment in accordance with opinion.]

Grant, Smith and Company and McDonnell, Ltd. v. Seattle Construction and Dry Dock Company (Appeal Cases):

[1920] A. C. The Law Reports (January 7) 162.

Marine Insurance—Policy—Perils of the Sea:

Where a dredge which it was sought to tow from one point to another sank during the night, the sinking was a result of the perils of the sea, and would be included in a marine policy.

[Judgment in accordance with opinion.]

John L. Roper Lumber Co. v. Portsmouth Fisheries Co. (N. C. D. C.):

260 Federal Reporter (January 15, 1920) 1008.

Marine Insurance—Particular Average—Liability:

Where there was a loss of a concrete mixer which broke from the deck of a barge to which it had been bolted, when the barge capsized at sea, and in which position it was towed 30 miles to port, it was *Held*, That the insurer was not liable in particular average under its policy exempting it from such liability unless such particular average loss was "caused by stranding or sinking."

[Decree for company below. Here affirmed in favor of company.]

Snare and Triest Co. v. Fireman's Fund Ins. Co. of San Francisco (U. S. C. C. A.):

261 Federal Reporter (March 4, 1920) 777.

Marine Insurance—Time Policy—Recovery:

A time policy of marine insurance on the plaintiff's houseboat "whilst anchored in a creek off Netley, however employed. With liberty to shift," against the usual perils, contained a clause: "Concluding all risk of docking, undocking, changing docks and going on gridiron or graving docks as may be required during the currency of this policy." The vessel was at the time anchored in the river Hamble, Southampton Water, which it was agreed, came within the words "in a creek off Netley." During the currency of the policy the plaintiff desired to have the houseboat cleaned and her underworks examined for repairs, and he arranged to have her towed by a low-powered tug from the Hamble up Southampton Water to a yard on the river Itchen above Southampton Docks, a distance of about seven miles, and to have her placed on a gridiron there. This yard was the nearest and most convenient yard with a gridiron. Both the river Hamble and the yard were within the port of Southampton. The tug was not available on the day fixed for the towage, and a larger tug was sent, and the houseboat was lashed alongside the tug and thus towed to the yard. On arrival in the Itchen about four feet of water were found to have entered the houseboat, and she continued to make water and

sank outside the yard. It was found that some of the side seams above the water line were defective and had opened, and the bow wave made by the tug and tow raised the water to the level of the defective seams, and the water entered and caused the sinking. The plaintiff did not know that the seams were defective. The towage was performed in the manner usual in Southampton Water. At the time when the houseboat left the Hamble the plaintiff did not intend to take her back there during the currency of the policy, but to lay her up in the Itchen. In an action on the policy: *Held*, (1) That the taking of the houseboat to the yard on the Itchen was authorized by the docking clause in the policy, and that therefore the vessel was covered when the loss occurred; (2) That the vessel was lost through a peril of the sea; and (3) That the plaintiff had not at the time of the loss abandoned the insured adventure.

[Judgment in accordance with opinion.]

Whittle v. Mountain (K. B. Div.):

[1920] 1 K. B., The Law Reports (March) 447.

Marine Insurance—"Perils of the Sea"—Loss:

Where an oil barge which was being towed in smooth water, within 30 minutes after starting on the voyage broke loose under the weight of her own cargo, necessitating stranding due to initial defective construction, such loss was not covered by a marine policy against perils of the seas, fires, etc., the loss not being proximately caused by a "peril of the sea."

[Judgment in accordance with opinion.]

Gulf Transp. Co. v. Fireman's Fund Ins. Co. (Miss. S. C.):

83 Southern Reporter (April 10, 1920) 730.

Marine Policy—"Final Port"—Construction:

By a written clause inserted in the ordinary form of Lloyds policy, a ship was insured on a voyage "from any port or ports, place or places on the River Platte to any port or ports, place or places in France or the United Kingdom (final port) excluding Mediterranean via any ports in any state." The policy was upon the ship only and against total loss only. The ship was loaded in the River Platte with a mixed cargo, and sailed from Buenos Aires for Dakar, where she was ordered to discharge part of her cargo at St. Nazaire and the rest at Havre. After discharging the final parcels at Havre, she sailed for Barry for bunkers and was totally lost on the way; *Held*, That upon the true construction of the policy "final port" meant the final port of discharge whether in the United Kingdom or in France and that at the time of her loss the ship was not upon the voyage insured.

[Judgment in accordance with opinion.]

Marten v. Vestey Brothers, Limited (Appeal Cases):

[1920] A. C. The Law Reports (April) 307.

Marine Policy—"Casualty"—Recovery:

By policies of marine insurance relating to certain bales of wool and subscribed by the defendants which it was

agreed had to be read with the cover notes, which contained an essential term not in the policies the risk was described as "Including all risk of craft fire, coasters, hulks, transshipment and inland carriage by land and/or water and all risks from sheep's back and/or station while awaiting shipment and/or forwarding and until safely delivered into warehouses in Europe with liberties as per bill of lading." The plaintiff had bought the wool from a company f o. b. at a named foreign port and had taken an assignment of the policies. The company's wool came from two of three different places down to the port and was carried partly by land and partly by small local steamers. Some part of it was usually carried on deck. On arrival at the port of loading it was put into hulks until the ocean steamer could receive it. The wool arrived in England and no complaint was made in respect of it until it had been taken into the plaintiff's premises and about 140 bales of it had been used. It was then discovered that a considerable quantity of the bales were badly damaged by water, the wool being discolored, tender and heated and still wet. The evidence showed that salt water must have reached the wool during transit on board the local steamers and probably as deck cargo and that the damage was quite exceptional and such as had never in a long experience been known to arise under the normal conditions of such a transit. *Held*, That there was evidence of a casualty, or something accidental, and of a danger which might or might not arise, although the particular nature of the casualty was not ascertainable, and that the underwriters were therefore liable.

[Judgment for plaintiff.]

Gaunt v. British and Foreign Ins. Co., Ltd., Marine Ins. Co (K. B. Div.):

(1920) 1 K. B. The Law Reports (May) 903.

Marine Insurance—Partial Loss—Subsequent Total Loss:

By a time policy the owners of a steamer insured her with certain underwriters against marine risks only, but including particular average. The vessel was in the service of the Admiralty under a charter party by which the Admiralty contracted to pay for loss by war risks the ascertained value of the steamer, if she were totally lost, at the time of the loss. During the currency of the policy the vessel sustained damage by marine risks; the damage was not repaired, but it depreciated her value of £1770. On a subsequent voyage during the currency of the policy the vessel became a total loss by war perils. The Admiralty in consequence of the unrepaired damage paid the owners £1770 less than they would otherwise have paid. In an action by the owners to recover from the underwriters their proportion of the £1770, *Held*, That as the partial loss continued to the prejudice of the owners notwithstanding the subsequent total loss, there was no merger of the former in the latter, and that the underwriters were liable.

[Judgment against company.]

Wilson Shipping Co. v. British & Foreign Insurance Co. (K. B. Div.):

[1920] 2 K. B., The Law Reports (June) 25.

Policy—Risk—"Beginning the Adventure":

An "Ocean cargo open policy" covered "beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof." While the vessel upon which the cargo was intended to be shipped was manoeuvring for position for loading, she struck an obstruction causing damage and delaying the shipment. The goods intended to be shipped were on board crafts awaiting to be loaded. Because of the delay and inability to ship on any other vessel, the goods became seriously damaged. *Held*, That the risk under the policy did not attach until the goods were loaded; that was the "beginning the adventure."

Same—Typewritten Provision—Construction:

The attachment of the typewritten form manifested an intention of the parties that the printed provisions have the meaning and effect called for by their language so far as they were not in conflict with the typewritten provisions.

Same—"Risk of Craft"—Construction:

The clause "including all risk of craft," is to be construed as insuring the cargo while in transport to or from the vessel in which the voyage is made; it would not cover loss due to delay arising out of damages sustained by the vessel prior to the loading.

Same—Delay—Liability for Goods not yet Loaded:

In view of the fact that the policy was an open one, which named no particular vessel, it is to be inferred that "the vessel," as contained in the clause providing for liability for loss or damage arising out of delay meant only that liability would attach for delay after the goods had been loaded.

Same—Attachment of Risks—Contract Construed:

The words "laden or to be laden on board the good steamer or steamers" is but descriptive of the thing to be insured and do not fix the time of the attachment of the risk.

Same—"Vessel or Conveyance"—Construction:

Where the policy contains such a "beginning the adventure" clause, it is controlling as it fixes the time when the risk attaches. The policy insured "beginning the adventure upon said goods and merchandise from and immediately following the loading there on board the vessel or conveyance as aforesaid." *Held*. That the words "the vessel or conveyance" could not be construed as intending to cover craft or boats used in getting the merchandise to the vessel. Such words were intended to refer only to the boat carrying the cargo on the voyage described.

Same—Risk—Contract Construed:

The words extending coverage to "All risk until safely delivered into the consignee's warehouse," did not cover loss by delay occasioned by damages to the vessel on which the goods were to be shipped before such goods were loaded.

Same—Same—Same:

The policy contained the further clause "It is especially

understood and agreed, however, that, notwithstanding the foregoing, the risk under this policy only commences at the port of shipment, no lighterage or craft risk from the interior being covered." *Held*, That this last clause shows that no risk under the policy was to attach prior to the merchandise being at the port of shipment. It did not indicate a purpose to modify the provision fixing the attachment of the risk at the "beginning the adventure."

[Judgment for insurance company below. Here affirmed in favor of insurance company.]

Bluefields Fruit & S. S. Co. v. Western Assur. Co. of Toronto (U. S. C. C. A.):

265 Federal Reporter (August 26, 1920) 221.

Action on Marine Policy—War Risk—Recovery:

On the night of July 23, 1917, a merchant vessel was sailing in convoy from the United States to England, and, in obedience to Admiralty orders, was steaming without lights. The night was very dark. The convoy was moving at six to seven knots. One of His Majesty's warships was at the same time on a voyage to pick up a convoy of merchant vessels and was steaming without lights at twelve knots. The two ships sighted one another at close quarters and a collision occurred in which both ships were damaged. There was no negligence in the navigation of either ship. The merchant ship was insured under a marine risks policy containing the usual f. c. and s. clause and a war risks policy which covered "all consequence of hostilities or warlike operations by or against the King's enemies." *Held*, That the war risks underwriter must bear the loss, in as much as, although the war ship was not at the material moment actually engaged in convoying vessels but was going to a point at which she was to take up the duty of escorting a convoy, she was engaged in a war like operation, and the collision was, therefore, a consequence of a war like operation.

[Judgment against company. Affirmed against company on appeal.]

Richard de Larrinaga v. Admiralty Commissioner (K. B. Div.):

(1920) The Law Reports (September) 65.

Marine Insurance—Reinsurance—Liability:

The plaintiffs insured (lost or not lost) the cargo of a steamship which was on a voyage from Italy to the United Kingdom. On the evening of the same day the ship put into port with her cargo on fire. On the next morning the casualty was posted at Lloyd's and about the same time a casualty slip containing the information was sent by Lloyd's to their subscribing underwriters, including the plaintiffs. The plaintiffs, however, did not read it, and before they knew of the casualty they, through their brokers, effected a reinsurance with the defendants, who were in the same state of ignorance. If the slip had been duly attended to, there were at least four and probably five hours in which the information as to the fire might have been communicated by the plaintiffs to the brokers. The defendants refused to pay the

plaintiffs under the policy of reinsurance on the ground that the plaintiffs ought to have known of the loss and disclosed it to the defendants before the contract of reinsurance was made. In an action on the policy of reinsurance: *Held*, That under S. 18, sub-ss. 1, 3 and s. 19, of the Marine Insurance Act of 1906, the plaintiffs must be deemed to have known of the casualty at the time the contract of reinsurance was effected, and as they had ample time to communicate it to their brokers, they were either by themselves or their agents (notwithstanding that the defendants might have discovered the loss by looking at the casualty board or casualty slips) under an obligation to disclose it to the defendants, and that as they had not done so they were not entitled to recover on the policy.

[Judgment in accordance with opinion.]

London General Ins. Co., Ltd. v. General Marine Underwriters' Assn., Ltd. (K. B. Div.):

(1920) 3 K. B., The Law Reports (September) 23.

Action on Policy—Prize of War—Recovery:

Where an insurer of a cargo against fire, after knowledge that the ship had been captured as a prize of war, renewed the insurance in consideration of an additional premium, it cannot defend against the loss by fire on the ground of the negligence of the prize crew.

Same—Loss—Proximate Cause:

Where fire originated in the coal bunkers of a prize vessel, and despite all efforts to stop it, progressed until, in the judgment of the commanding officer, the vessel could not be saved and the ship was then taken into shallow water and sunk, the fire was the proximate cause of the loss of the cargo within the terms of the policy.

[Judgment in accordance with opinion.]

Hagemeyer Trading Co. v. St. Paul Fire & Marine Ins. Co.;

Thonsen v. Same (U. S. C. C. A.):

266 Federal Reporter (September 30, 1920) 14.

Action for Damage—Contract to Obtain Insurance—Breach:

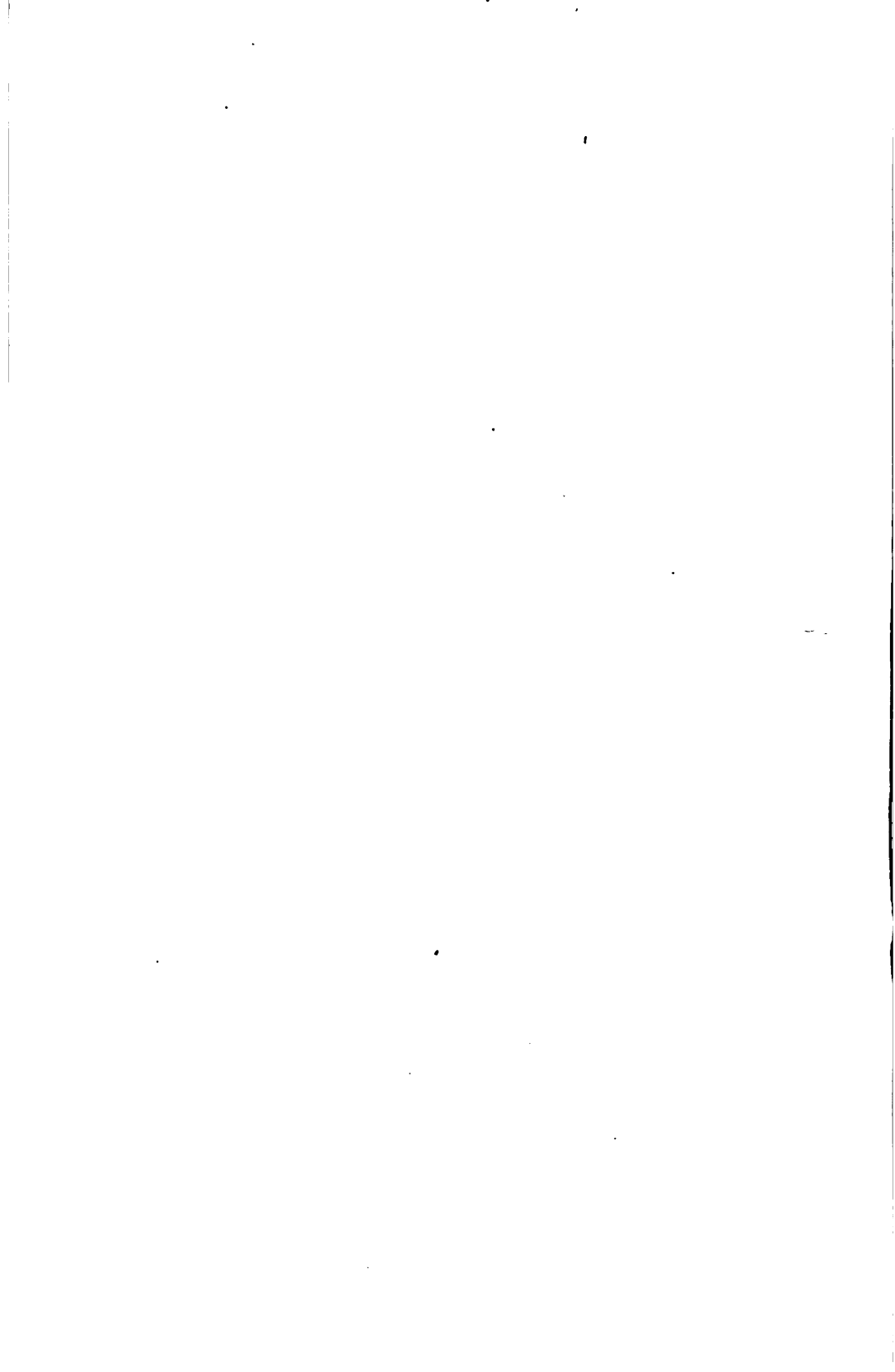
The plaintiffs were owners of warehouses at Liverpool, Birkenhead and Newport. From 1916 the export of nitrate of soda from South America was in the hands of the British Government, who owned the cargoes and controlled the shipping. By arrangement the plaintiffs used to warehouse the nitrate of soda arriving at Liverpool, Birkenhead or Newport. On receiving notice of a cargo coming to one of these ports they reserved warehouse space for it, and instructed their Liverpool insurance brokers to effect a p. p. i. policy on their anticipated profits against marine and war risks, and against the risk of the cargo being diverted by the Government to another destination; and the Liverpool brokers instructed their London brokers to effect a policy covering those risks. The latter failed to disclose to the underwriters the risk of diversion, and accordingly when a vessel bound

for Birkenhead with a cargo of nitrate was diverted by the Government to another port and the underwriters were sued on the policy, the underwriters successfully defended the action on the ground of non-disclosure of such an unusual risk. The plaintiffs then sued the Liverpool brokers for damages for negligence in not having effected a policy to cover the risk: *Held*, That as the p. p. i. policy, which the defendants were employed to obtain, was by s. 4, sub-s 2 (b) of the Marine Insurance Act, 1906, void, the plaintiffs were not entitled to recover damages for breach of the contract of employment to obtain such a policy.

[Judgment in accordance with opinion.]

Cheshire & Company v. Vaughan Brothers and Co. (K. B. Div.):

(1920) 3 K. B., the Law Reports (October) 240.



MISCELLANEOUS INSURANCE

Fidelity Insurance—"Insurer"—Statute:

Where a fidelity insurance company became surety on the bond of a receiver, it is an "insurer" within R. S. 1909, Art. 7068, as amended, Laws 1911, p. 282, stipulating that in every action against any insurance company, if such company has vexatiously refused to pay the loss, the court may allow damages and reasonable attorney's fees.

Same—Receivers' Bond—"Policy"—Statute:

Where a fidelity insurance company became surety on the bond of a receiver such bond is an insurance "policy" within R. S. 1909, Art. 7068, amended Laws 1911, p. 282.

[Judgment in accordance with opinion.]

State ex rel. Elberta Peach & Land Company v. Chicago Bonding & Surety Company (Mo. S. C.):

215 Southwestern Reporter (November 19, 1919) 20.

Liability Insurance—Action against Insured—Insurer's Refusal to Defend:

Where a liability indemnity policy required the insurer to defend any action against the insured and further provided that no suit could be brought against the insured, the insurer, after being impleaded in a suit against the insured upon its denial of liability and refusal to defend, could be held liable in such suit upon judgment being rendered against insured.

Same—Risk—Coverage:

The liability indemnity policy agreed to indemnify the insured who were dealers in paper bags, against loss from liability for injuries sustained within premises designated as "store and warehouse." The insured was to conduct no business in such premises "except as store and warehouse." *Held*, That the policy covered an accident to an operator of the printing press upon such premises where the printing of bags and paper was a necessary part of the business of the store and warehouse.

[Judgment for plaintiff below. Here affirmed against company.]

Continental Paper Bag Co. et al. v. Bosworth (Tex. C. C. A.):

215 Southwestern Reporter (November 19, 1919) 126.

Income Taxes—Embezzled Money—Taxation:

Where the defendant embezzled moneys which were delivered to him to be paid as insurance premiums, he committed a larceny, and the money so received was not subject to taxation under the Income Tax Act.

[Judgment in accordance with opinion.]

Rau v. United States (U. S. C. C. A.):

260 Federal Reporter (November 20, 1919) 131.

Workman's Compensation—Practice—Appeal:

On an appeal from the Workmen's Compensation Board the court of common pleas has no right to reexamine the evidence before the referee or board which is empowered to gather from the record returnable on appeal what was the basis of the findings and of the decision and to judge of its legitimacy, if based on competent evidence, direct or circumstantial, the facts found are conclusive upon the court.

Same—Appeal—Jurisdiction:

The Workmen's Compensation Act gives the court of common pleas no authority to review the action of the board in refusing to grant a hearing *de novo* on the ground of after-discovered evidence.

[Judgment in accordance with opinion.]

Berks County Trust Company v. Reading Paper Mills
(C. P., Berks Co., Pa.)

76 Legal Intelligencer (November 21, 1919) 824.

Burglary Insurance—Contract—Instruction:

Where a schedule which made a part of a burglary insurance policy detailed in a question and answer form the representations of the insured as affecting the risk, a provision that changes of condition of property should invalidate the policy must be deemed to refer to conditions set forth in the schedule, and since in the schedule there were no representations made as to iron shutters, the removal of such iron shutters by insured's landlord and replacing of same with wire glass was not a change of material conditions of policy.

[Judgment for plaintiff below. Here affirmed against company.]

Zivitz et al. v. Maryland Casualty Company (N. Y. S. C.):

178 New York Supplement (November 24, 1919) 211.

Reformation—Mistake—Burden of Proof:

In a suit to correct an alleged mutual mistake in a policy of indemnity insurance the burden of proving the mistake is upon plaintiff.

Same—Same—Pleading:

In actions to reform written instruments on the ground of mistake, the complaint must clearly state what the original agreement was and points out precisely the misunderstanding, that the mistake was mutual and arose from the gross negligence of the plaintiff, or that the misconception originated in the fraud of the defendant.

Employer's Liability Insurance—Application—Presumption:

Where application is made for an employer's liability policy without going into details as to conditions to be put in the policy, it will be presumed that the ordinary form of policy was to be used.

Reformation—Mutual Mistake—Sufficiency of Evidence:

In an action to correct an alleged mistake in an employer's liability policy upon the ground that the words "No excep-

tions" had through mistake been placed after the printed statement that no such insurance had "been canceled or the renewal thereof refused, except as follows" it was *Held*. That such evidence constituted a preponderance of the testimony against the claim that the mistake was mutual.

Application—Other Insurance—Statement Construed:

Statement of insured that no insurance of specified kinds "has been declined, nor has any such insurance been canceled or renewal thereof refused, except as follows," if followed by no exception must be taken to be absolute.

[Judgment for company below. Here affirmed in favor of company.]

Peninsula Lumber Co. v. Royal Indemnity Company
(Ore. S. C.):

184 Pacific Reporter (November 24, 1919) 562.

Indemnity Insurance—Partnership—Dissolution:

The dissolution of a partnership holding a policy of indemnity insurance against loss through injuries to employees, does not necessarily render indemnity policy void.

Same—Same—Same:

Where an insurer indemnifying a partnership against loss through injury to employees did not treat the contract as terminated, when one of the two partners purchased the interest of the other and ran the business alone, it waived any defense on account of the dissolution of the partnership.

[Judgment in accordance with opinion.]

Illinois Indemnity Exchange v. Industrial Commission et al. (Ill. S. C.):

124 Northeastern Reporter (November 25, 1919) 665.

Appeal and Error—Misnomer—Amendment:

Where a suit was entitled in the name of board of supervisors for the benefit of the county, instead of in the name of the county, there was merely a misnomer, and defendant's failure to object thereto in trial court so that proper amendment could be made, precluded his raising such point on appeal as the county was in court though not named as complainant.

Foreign Insurance Company—Service of Process—Statute:

In an action by a county against a foreign surety company the mere return on the summons "executed personally by delivering to E. M., agent of and for defendant" was insufficient showing of service of process to support the decree pro confesso, in view of Mississippi statute defining insurance companies, and statutes as to agent of foreign insurance companies for service of process; there being nothing to show that service was had upon any person appointed and designated as such agent or that any such person was appointed by defendant.

Same—Same—Appointment of Agent—Judicial Notice:

The court cannot take judicial notice that the agent of a

foreign insurance company upon whom process was served was the agent appointed by the company to receive and acknowledge service of process.

[Judgment in accordance with opinion.]

National Surety Company v. Board of Supervisors of Holmes County (Miss S. C.):

83 Southern Reporter (November 29, 1919) 8.

Workmen's Compensation Insurance—Course of Employment—Evidence Considered:

Claimant's decedent was killed on his way from work by a locomotive of the Lehigh Valley Railroad while within the premises of his employer and while pursuing the customary route taken when going to and returning from the place of employment. The defendant claimed that it was exempt from liability on the grounds that the railroad was a lessee of the right of way where the accident occurred, that decedent was not in the course of his employment, and that his death was not due to the condition of defendant's premises. *Held*, That an employee who has finished his work is entitled to the Workmen's Compensation Act until he has completely left the place of employment or had sufficient time to leave it, and that his protection extends to a leased railway right of way upon the premises.

[Judgment for employer below. Here reversed in favor of employee.]

Tigue v. Forty Fort Coal Co. (C. P., Luzerne Co., Pa.):

76 Legal Intelligencer (December 5, 1919) 864.

Agent—Suit for Commissions—Evidence Admissible:

An averment that a surety company's representative agreed to pay a certain commission to its agent on certain business secured by him, permitted proof either of an oral or written agreement.

Agent's Contract—Statute of Frauds:

An agreement by a surety company executing certain bonds to pay its agent annually, while the bonds were in force, a specified commission, was not within the statute of frauds as it was conformable within one year where on the contingency that only one annual premium on the bonds should be paid.

Same—Same:

An agreement by a surety company executing certain bonds to pay its agent annually, while the bonds were in force, a specified commission, was not within the statute of frauds, as it was permissible by one of the parties within one year, being already performed by the agent.

Foreign Company—Agent—License:

One licensed to solicit insurance as agent, under Vernon's Sayles' Ann. Civ. St. 1914, Art. 4960, need not procure an additional license as agent of a particular company under

Art. 4970 requiring agents of foreign companies to be licensed.

[Judgment for plaintiff below. Here affirmed against company.]

National Surety Co. v. Murphy (Tex. C. C. A.):

215 Southwestern Reporter (December 10, 1919) 465.

Burglary Insurance—Action on Policies—Sufficiency of Evidence:

In an action on a policy of burglary and theft insurance, the evidence was *Held*, sufficient to warrant a finding that certain articles disappearing from insured's residence was taken by burglars or thieves without his consent.

Same—Same—Pleading:

In an action on a policy of burglary and theft insurance, an averment in the complaint that the property was feloniously abstracted from the interior of plaintiff's residence was sufficient to cover a loss by theft, as distinguished from burglary.

[Judgment for plaintiff below. Here affirmed against company.]

National Surety Co. v. Murphy (Tex. C. C. A.):

215 Southwestern Reporter (December 10, 1919) 461.

Agent and Agency—Commissions:

Where insurance association in the hands of a receiver credited a percent of losses sustained by policyholders upon unpaid premiums, but paid agent's commissions according to the amount of insurance accepted, without offsetting the amount of premium allowed on losses, a sub-agent, holding a contract with an agent entitling him to commission on "risks written and accepted" was entitled to have commission computed as if all of the premiums had been paid in cash.

[Judgment in accordance with opinion.]

Logan v. Sharpe et al. (Ia. S. C.):

174 Northwestern Reporter (December 12, 1919) 568.

Burglary Insurance—Policy—Liability:

The policy promised indemnity against loss by felonious entry into insured's safe by actual force of which there were visible marks upon the safe by tools or explosives, etc. Liability was excluded if entry was effected by opening door by a key or manipulation of the lock. Insured sustained a loss. The entry of outer door was effected by the manipulation of the lock and the entry of the inner door was effected by a hammer and chisel and there were visible marks of a forcible entry, *Held*, That policy covered loss.

[Judgment for plaintiff below. Here affirmed against company.]

Moskovitz v. Travelers' Indemnity Co. (Minn. S. C.):

174 Northwestern Reporter (December 12, 1919) 616.

Foreign Insurance Companies—"Doing Business"—Statute:

A foreign insurance company having certificate entitling it to do business in state and to guarantee performance of contracts, other than insurance contracts, under Insurance Law Art. 9 and Sec. 70, Subd. 4, was not required to limit its contract of guaranty to period during which it was authorized, at time of execution of contract, to transact business under Sec. 32, and was not precluded from making premium payable in installments due after expiration of such period; the continuance of company's liability after expiration of period not constituting "doing business" in state, within Sec. 9.

Same—Same—Estoppel:

Where owner did not question contractor's bond or require contractor to furnish insurance contract upon expiration of period for which surety company was authorized to do business in the state, contractor, having had the benefit of the bond, could not refuse to pay premium upon the ground that surety had no right to do business in the state.

Same—Same—Liability while Authorized:

While authority of foreign companies to do business in states other than that in which they are incorporated may be revoked or terminated, the liability incurred while authorized to do business in the foreign state is not limited to period during which such authority continues.

[Judgment in accordance with opinion.]

American Fidelity Co. v. Leahy (N. Y. S. C.):

178 New York Supplement (December 15, 1919) 511.

Appeal and Error—Review:

Where a demurrer to a plea in abatement was overruled the ruling cannot be considered in the Appellate Court, where no memoranda to the demurrer was set out.

Pleading—Admissions—Service of Process:

Where the complaint alleges that the defendant guaranty company was operating an office and agency in the State of Indiana, it is admitted, by failure to deny, that defendant was authorized to transact business in the State and the process might be served upon its authorized agent, as provided in Burns Ann St. 1914, Sec. 4798.

Fidelity Bond—Defrauding Employees—Parties:

Where a Fidelity and Guaranty Company, operating an office and agency in Indiana, issued a fidelity bond, agreeing to reimburse plaintiff for loss sustained by fraud or dishonesty of named employees in the State of Ohio, and such employees, who were principals in the bonds, embezzled plaintiff's funds, it was *Held*, That in view of Burns Ann St., 1914, Sec. 4798, providing for service on such companies, that the guaranty company, though it was a non-resident, cannot defeat an action on the bond brought in the State of Indiana, on the ground that the defrauding employees, who have never been residents of Indiana, were essential parties.

Same—Reformation—Necessary Parties:

Employees who signed a fidelity bond as principals, are necessary parties to an action to reform the bond.

Same—Same—Service by Publication:

Where two of plaintiff's employees, who signed surety bond, as principals, absconded, and plaintiff brought action against surety company, in which he also sought reformation of the bond, it was *Held*, That, where the employees were made parties and notified by publication, such service will support a judgment against them reforming the bond.

[Judgment for company below. Here reversed against company.]

Ransburg v. U. S. Fidelity & Guaranty Co. et al. (Ind. App.):

124 Northeastern Reporter (December 16, 1919) 765.

Appeal and Error—Intermediate Courts—Review:

Where terms of policy are unambiguous, its construction is a question of law which survives the unanimous decision of the appellate division and is subject to review by the court of appeals.

Policy—Construction—Coverage:

Policy insuring against "loss and expense by reason of claims made upon the assured," by reason of injury due to ownership, maintenance and use of a delivery automobile is unambiguous and limits the insurer's liability to accidents which happen while the automobile is being used in the firm's business so insured, and insurer is not liable for loss due to operation of automobile by another firm composed of insured's partners and another.

[Judgment for plaintiff below. Here reversed in favor of company.]

Hartigan et al. v. Casualty Co. of America (N. Y. C. A.):

124 Northeastern Reporter (December 16, 1919) 789.

Burglary Insurance—Forfeiture—Burden of Proof:

In an action on a policy of burglary insurance, relieving insurer from liability in event the premises should become unoccupied as a dwelling, the burden of proof to show the unoccupied condition of the premises was upon the defendant.

Same—Policy—"Occupancy":

Where a burglary insurance policy gave the insured the right to leave the premises unoccupied as a dwelling for four months in each calendar year, the insurer was not relieved from liability where it appeared that the goods insured were in an unfinished dwelling house, occupied by insured's family in the day time and wherein insured occasionally slept at night, pending the completion of the house. "Occupancy" implies an actual use of a house as a dwelling place, not absolutely continuous, but as a place of usual return.

Same—Same—Same—Evidence:

Evidence of the custom of insurer with reference to

granting insurance on completed houses not occupied as dwellings was inadmissible.

Same—Delay in Payment of Loss—Penalty:

In an action where a burglary insurance policy, which permitted the house to remain unoccupied for four months in each calendar year, where it appeared that the insurance was written October 13, 1915, and loss occurred November 2, following, attorney's fees as a penalty for vexatious refusal to pay the loss were properly imposed; refusal to pay being based on permitting the house to remain unoccupied.

[Judgment for plaintiff below. Here affirmed against company.]

Young v. Fidelity & Casualty Co. of New York (St. Louis C. A.):

215 Southwestern Reporter (December 17, 1919) 496.

Workmen's Compensation—Policy—Coverage:

A policy covering the business of an electrical store, retail, or combined wholesale and retail, including installation and repairs upon electrical equipment within buildings, etc. and covering enumerated classes of employees, including "chauffeur and helpers" did not cover injury to or the death of a chauffeur of the employer, irrespective of the duty he was performing, as when, at the instance of the employer, he was taking to her home a former female employe of the business.

[Judgment in accordance with opinion.]

Western Indemnity Co. v. Industrial Acc. Co. of Cal. et al. (Cal. Dist. C. A.):

185 Pacific Reporter (December 29, 1919) 306.

Delivery of Policy for Benefit of Agent—Validity:

Where insured accepted policy and executed note for premium for purpose of enabling the insurer's agent to recover the fee paid the physician for his medical examination and upon the promise of the agent to return the note and take assignment of the policy, the policy, not having been delivered for the purpose of making a binding contract of insurance was never in force.

[Judgment in accordance with opinion.]

McElrath v. Gomer (Ark. S. C.):

215 Southwestern Reporter (December 31, 1919) 881.

Employer's Liability—Policy—Coverage:

Employer's liability policy covering against loss from liability and damage on account of injuries suffered by any employe of insured at his place of business as a result of accident within the policy period, through the prosecution of the business operations described, consisting of certain construction work carried on by the employer himself, covering injury to a female clerk, resulting, from a fall into an excavation made in the course of the construction work.

Same—Same—Construction:

Where the employer's liability insurance policy is reason-

ably susceptible of two different meanings, it should be constructed so as to give effect to the contract, favoring insured rather than to defeat it.

Action on Policy—Non-Payment of Premium—Pleading:

Non-payment of the premium is an affirmative defense and must be specially pleaded.

Same—Same—Waiver:

Employer's liability insurer under a policy not covering loss from liability for injury suffered by any employee unless his remuneration was included in the amount on which the premium was based, waived the defense of non-payment of premium by failing to raise it until after the time for demanding additional premium on account of the injured employee's wage having expired and until the close of the employer's case in his action against it.

Same—Defense—Estoppel:

Where the insurer after an accident to an employee claimed by insured to be covered by the policy permits its physician to take part in treating the employee, it was estopped to deny liability on the ground that the particular employee was not covered by the policy.

Action against Insured—Compromise by Insured:

Where insurer committed breach of its contract by withdrawing from the injured employee's suit, the insured employer had the right to make the best compromise he could with the injured employee.

[Judgment for company below. Here reversed against company.]

Rieger v. London Guarantee & Accident Co. of London,
Eng. (Kansas City C. A.):

215 Southwestern Reporter (December 31, 1919) 920.

Appeal and Error—New Trial—Discretion of Court:

Trial courts have a broad discretion in awarding a new trial and appellate court will not reverse a judgment on that ground unless an abuse of discretion appears.

Boiler Insurance—Policy—"Rupture":

In an action on a policy covering boiler explosions or ruptures, provided that by the term "rupture" was to be understood tearing asunder of the boiler or any parts thereof, caused by pressure of steam and that simple cracking of cast iron parts should not be deemed a rupture, it was *Held*, That evidence showing that a break in the cast iron portion of a steel boiler about 15 inches in length, bulging out about $\frac{3}{4}$ ths of an inch, was a rupture.

[Judgment in accordance with opinion.]

Louisville College of Dentistry v. Hartford Steam Boiler
Inspection & Ins. Co. (Ky. C. A.):

215 Southwestern Reporter (December 31, 1919) 941.

Action on Policy—Notice of Accident—Waiver:

The conditions of a liability policy requiring immediate

notice to insurer of an accident are waived when the insurer actually assumes control of the litigation growing out of the accident.

Neglect Prior to Policy—Liability:

Where the accident occurred during the period of liability insurance policy, insurer cannot claim that it was not liable in that the neglect causing injury was in construction work done prior to the issuance of the policy.

Same—Loss—Evidence:

Where the insurer in a liability insurance policy, after an accident sold his business under an agreement stipulating that the judgment of an insured person was a lien upon the property and that the balance due insured under the agreement should not be paid by the purchaser until such judgment and lien were fully satisfied of record and the purchaser issued a check to insured with which insured, together with a small check of his own, paid the judgment, insured actually sustained loss and paid money in satisfaction of the judgment within the meaning of the policy.

Indemnity Insurance—Contract—Construction:

An indemnity contract is to be strictly construed and measures the rights of the parties thereto.

Judgment—Insurance—Costs of Defense:

An insured who pays a judgment for the full amount limited in a liability policy indemnifying against actual loss or a judgment for a smaller amount than such limited sum, can recover the sum with interest only from the time of such payment, but interest accruing on the judgment pending an appeal therefrom is not an expense or costs of defendant in the action.

Action on Policy—Venue:

The venue of the action was in the county where the contract was made, policy delivered, and where contract was to be performed.

Appeal and Error—Findings of Fact—Harmless Error:

In an action on a liability policy the insurer cannot complain that a finding that plaintiff had performed all the conditions of the policy was unsupported by the evidence where the court also found upon ample evidence that insurer had waived any breach of the conditions.

[Judgment for plaintiff below. Here affirmed against company.]

Tulare County Power Co. v. Pacific Surety Co. (Cal. D. C. A.):

185 Pacific Reporter (January 5, 1920) 399.

Foreign Company—Deposits—Interest:

As a general rule, interest earned on a fund belongs to the owner of the fund; it is *Held*, That moneys deposited by a foreign mutual hail insurance company, under Sec. 4896 et Seq. Comp. Laws, 1913, belongs to the insurance company making the deposit, and that all interest earned by the

fund while on deposit with the state treasurer becomes part of the fund and belongs to the owner thereof.

[Judgment for plaintiff below. Here affirmed.]

Des Moines Mut. Hail & Cyclone Ins. Assn. v. Steen et al. (N. D. S. C.):

175 Northwestern Reporter (January 16, 1920) 195.

Annotation—Validity of Contract Effected under Duress Exercised by Third Person:

Under the above heading appears an annotation to the case of Smith et al. v. Commercial Bank of Jasper, heretofore reported in 81 Southern Reporter 154; 4 A. L. R. 362.

Workmen's Compensation—Sub-Contractor—Evidence:

Evidence was sufficient to support finding that deceased was at the time of his injury an employe of sub-contractor.

Same—Policy—Scope of Risk:

Workmen's Compensation insurer was not liable under policy to pay compensation to the dependents of a deceased workman, whose death was a result of injury received while excavating a sewer, such work being expressly excepted by the policy.

Same—Same—Construction:

Where provisions of an insurance contract are not free from uncertainty, they are to be construed most strongly against insurer who has framed the contract and caused the uncertainty to exist.

Same—Industrial Commission—Powers:

The Industrial Accident Commission did not have power to make a new contract between the employer and its workmen's compensation insurer.

Same—Same—Award:

The Industrial Accident Commission can make award on account of injury to employe only against the immediate employer or the insurer of his immediate employer.

Same—Constitutional Law—Applicability:

An amendment to constitution authorizing workmen's compensation legislation is not applicable to an accident which occurred some months before the adoption of the amendment.

[Judgment in accordance with opinion.]

Worswick Street Paving Co. v. Industrial Accident Commission, et al.;

Employer's Liability Assur. Corporation, Ltd. of London, Eng. v. Same (Cal. S. C.):

135 Pacific Reporter (February 2, 1920) 953.

Automobile Insurance—Fraudulent Conversion by Bailee—Risk:

Under the terms of an automobile policy written to indemnify the owner against loss by "theft, robbery, or

pilferage," the usual and ordinary meaning of these words involving the wrongful and fraudulent taking and carrying away of the article stolen, should be applied and the reasonable intention of the contract should not be extended to cover the fraudulent conversion by a bailee of the property so entrusted.

[Judgment for company below. Here affirmed in favor of company.]

Gunn v. Globe & Rutgers Fire Ins. Co. (Ga. C. A.):

101 Southeastern Reporter (February 7, 1920) 691.

Guaranty & Surety Company—"Insurance Company"—License Tax:

Guaranty and Surety Companies are "Insurance Companies" and are liable for license tax imposed by Kentucky statute.

Same—Taxation—Constitutional Law:

An imposition of a franchise tax and a license tax on Surety and Guaranty Companies is not double taxation nor in violation of constitutional provision that all taxes shall be uniform.

[Judgment in accordance with opinion.]

Greene, Auditor Public Accounts v. National Surety Co. (Ky. C. A.):

217 Southwestern Reporter (February 11, 1920) 117.

Action on Policy—Proof of Loss—Waiver:

Where insured gave verbal notice of hail loss to local agent and insurer sent its adjuster to ascertain the loss and offered to settle for an amount which insured refused to accept, there was a waiver by insurer of requirement as to written notice.

Same—Same—Estoppel:

Company was estopped from objecting to proof of loss on the ground that it was not verified where it recognized the claim as properly made and remained silent in regard to defect until it was too late to correct it.

Same—Same—False Statements:

Where there was no express provision of a hail policy that false statements in proofs of loss would defeat recovery, misstatements in the proof of loss not intentionally false nor made with a purpose to defraud did not bar recovery on policy.

Policy—Payment of Premium—Recovery:

That the premium had not been paid at the time of the loss was no defense where there was no provision in the policy that it should not take effect until the premium was paid and no intimation that the agents of the company were required to receive payment of premium before delivery of the policy.

Same—Proof of Loss—Compliance:

Where policies did not require insured to state his claim

for loss of the tobacco in weight directly due to hail, his failure to so state such loss did not bar recovery.

[Judgment for plaintiff below. Here affirmed against company.]

Cahill v. Royal Ins. Co. (Conn. S. C. E.):

108 Atlantic Reporter (February 12, 1920) 544.

Domestic Corporation—Internal Revenue—Excise and Income Tax:

Under income tax act as well as under excise act, tax is on income "received" during the year.

Same—Same—Premiums:

Where the insurer allows its agents to give 30 days for the payment of premiums, requiring them on the 5th of each month to remit the balance due it as shown by the last preceding monthly statement rendered to it, premiums received by them but not yet remitted to insurer are "received" within the meaning of the excise and income tax act, but not so as to premiums not yet paid to agents.

Same—Same—Reserve Funds:

The reserve funds required by the state insurance department are such reserve funds as "required by law" within meaning of excise and income tax acts.

Same—Same—"Reserve":

The term "reserve" or "reserves" has a special meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, variously computed or estimated, which, with accretions from interest, is set aside—"reserved"—as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims, and claims accrued, but contingent and indefinite as to amount or time of payment, and includes "unearned premium reserve" to meet future liabilities on policies, "liability reserve" to satisfy claims, indefinite in amount and as to time of payment, but accrued on liability and workmen's compensation policies, and "reserve for loss claims" accrued on policies other than those provided for in the "liability reserve," but it has nowhere been held that "reserve" in this technical sense, must be maintained to provide for the ordinary running expenses of a business, definite in amount and which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, reinsurance, and unpaid brokerage.

Same—Same—Same:

Diminution in reserves of insurance company over that of the preceding year is not taxable as income in the absence of findings that it is thereby restored to the free beneficial use of the company in a real, rather than a mere bookkeeping sense.

[Judgment in accordance with opinion.]

Maryland Casualty Co. v. United States (U. S. C. C. A.):

40 Supreme Court Reporter (February 15, 1920) 155.

"Engaged in Insurance Business":

Evidence considered where plaintiff engaged cargo space on defendant's ship, a contract whereby defendants agreed to procure war risk insurance at not to exceed 7½ percent was not "conducting insurance business" in violation of insurance law, Section 54, nor were defendants "engaged in insurance business."

[Judgment in accordance with opinion.]

Calumet & Hecla Mining Co. v. Stafford et al. (N. Y. S. C.):

179 New York Supplement (February 16, 1920) 672.

Principal and Surety—Subrogation—Right to Sue:

Where a street contractor was adjudged bankrupt, the contractor's surety, liable to creditors, could begin an action to subject the proceeds of the contracts to payment of claims or to be subrogated to the rights of the creditors and further, such surety to prevent a multiplicity of suits could join creditors as defendants to determine its liability, and court could render judgment in favor of each of the several claimants against surety.

Policy—Contract—Construction:

The contract of insurance, like any other contract, must receive reasonable construction, and while insurance contracts are construed most favorable to the insured where the meaning of the language is doubtful, there is no occasion for the application of this rule when the language has acquired by judicial construction, a clear definite meaning.

Contractor's Bond—"Material Furnished for the Improvement"—Construction:

Contractor's bond, conditioned upon payment for all "materials furnished for the improvement," *Held*, not to cover all materials furnished, but only such as actually entered into the work or was consumed in doing it, and not to include equipment or appliances used in the carrying out of the work done.

Same—Same—Same:

Lumber which was used by the street contractor to cover the dirt after it had been rolled and ready for the pavement and which was taken up again and used in similar work under other contracts was not covered by the contractor's bond to pay for "material furnished for the improvement."

Same—Same—Same:

Royalties due from contractor for the privilege of using a patented process for combining materials used in paving and machinery used in connection with laying such material were covered by contractor's bond to pay for "materials furnished for the improvement."

Same—Same—Same:

Stone taken from the quarry, for use in pavement, under

an agreement called a lease requiring contractor to pay a specific sum per ton of the stone removed, was covered by contractor's bond to pay for material furnished for improvement.

Same—Materialman's Claim—Filing:

A materialman's claim against paying contractor requirement to be filed "within 30 days from the time said improvement is completed" to entitle claimant to recover on contractor's bond may be filed before the contract is completed.

[Judgment in accordance with opinion.]

United States Fidelity & Guaranty Co. v. California-Arizona Const. Co. et al. (Citizens Natl. Bank, Intervenor) (Ariz. S. C.):

186 Pacific Reporter (February 16, 1920) 502.

Policy—Ambiguity—Construction:

Ambiguities in policy of insurance must be resolved in favor of insured.

Liability Insurance—Settlement of Suit—Violation of Policy:

The liability insurer, while having a right to control suits brought against assured had no control over suits brought by assured and hence settlement by assured of a suit brought by him against third person would not violate the policy.

Action on Policy—Fraud—Burden of Proof:

Fraud cannot be presumed, but must be proven, and if there is left room for the inference of an honest intent the proof of fraud is wanting.

Same—Failure to Bring Suit in Certain Jurisdiction—Defense:

Insured's failure to bring suit against a third person in a certain jurisdiction was not a defense to an action by insured on his liability insurance policy.

Same—Violation of Policy:

In action by insured against insurer under policy covering liability for accident providing that insured should not interfere in action brought against him to be defended by insurer, failure of insured to attempt to make use of an agreement of settlement of his own suit against a third party in violation of a stipulation therein was *Held*, not an inference with the action within the policy.

[Judgment in accordance with opinion.]

Utterback-Gleason Co. v. Standard Acc. Ins. Co. of Detroit, Mich. (N. Y. S. C.):

179 New York Supplement (February 23, 1920) 836.

Action for Personal Injuries—Parties:

Parties setting up two causes of action, one in tort against employer for injuries from negligence and the other against employer's liability insurer, was bad for misjoinder of parties and causes of action.

Same—Same:

Employer's indemnity insurer securing release not shown to have interest warranting joinder with insured's employer's suit for injuries.

Same—Same:

In an action by an employee for personal injury against his employer, insolvency of employer does not warrant making employer's indemnity insurer a party to such suit.

Same—Same—Privity:

The employee is not in privity with his employer and employer's insurer in a contract indemnifying against personal injury liability.

Liability Insurance—Payment of Judgment—Condition Precedent:

The payment of a judgment for employee's injuries by insured employer is a condition precedent to right to recover on liability indemnity policy.

[Judgment in accordance to opinion.]

Owen v. Jackson-Hinton Gin Co. (Tex. C. C. A.):

217 Southwestern Reporter (February 25, 1920) 762.

Action on Policy—Breach of Warranty—Burden of Proof:

In an action on a policy of credit insurance the burden of proof of breach of warranty in application was on defendant insurer.

Same—Pleading:

Where defendant insurer set up a defense of breach of warranty in application, plaintiff insured had right to meet such new matter by evidence of waiver without any amendment of the pleadings.

Same—Condition Precedent—Same:

Facts which are made conditions precedent by the terms of the policy must be pleaded and proved by plaintiff insured or he must plead and prove waiver thereof.

Same—Knowledge of Agent—Evidence:

In an action on a policy of credit insurance, defended by insurer for breach of warranty in application, it was *Held*, That the evidence justified the finding that the party who solicited in the policy was a general agent of insurer and that insurer was bound by his knowledge in regard to a threatened bad debt of insured.

Same—Action of Agent—Liability of Company:

There was no breach of warranty in the application for a policy of credit insurance because a certain loss was not included in a statement of insured's losses in the applica-

tion, such loss having been omitted because company's general agent advised insured it was not a loss.

[Judgment for plaintiff below. Here affirmed against company.]

L. Black Co. v. London Guarantee & Acc. Co. (N. Y. S. C.):

180 New York Supplement (March 8, 1920) 74.

Action on Policy—Measure of Recovery—"Costs":

Where the indemnity policy limited insurer's liability for one accident to \$5,000 and required it to defend suits at its own costs, prohibiting insured from settling claims except at its own costs, the liability of insurer, exclusive of costs was limited to \$5,000 and did not include interest thereon during the time it was unsuccessfully attempting to prevent a recovery against insured; the term "costs" not including interest.

Indemnity Policy—Risk—Construction:

An indemnity policy binding the insurer to indemnify insured against loss by reason of liability for damages on account of bodily injuries does not indemnify against liability but against loss from liability and no loss on which interest can accrue arises until the judgment which is the subject of indemnity is paid.

Courts—Foreign Decision:

Lower courts must follow the appellate court of their own state rather than foreign decisions.

[Judgment in accordance with opinion.]

Robert Gair Co. v. Travelers' Ins. Co. of Hartford, Conn. (N. Y. S. C.):

180 New York Supplement (March 8, 1920) 163.

Liability Insurance—Acts of Insurer's Attorney—Liability:

Where a liability insurer defended an action against insured which resulted in a judgment against it for more than the amount of its liability, such insurer was bound by the promises of its attorney and agents to take an appeal, whereby the insured was prevented from appealing the case until the time therefore had expired.

Same—Same—Same—Estoppel:

Where a liability insurer defended an action against insured, which resulted in a judgment against it and insurer promised that appeal would be taken, thereby leading insured to take no appeal until the time therefore had expired, insurer was estopped from asserting that an appeal would not have resulted in a reversal or that he was not damaged in the full amount it was compelled to pay.

[Judgment for plaintiff below. Here affirmed against company.]

McAleenan v. Massachusetts Bonding & Ins. Co. (N. Y. S. C.):

180 New York Supplement (March 15, 1920) 287.

Policy—Notice—Requirement—Validity:

Conditions in employer's liability policy requiring immediate written notice of an accident with the fullest information obtainable are valid.

Action on Policy—Contract—Construction:

The general rule of construction of contracts of insurance, as of other contracts, is that the conditions are to be taken most strongly against the writer of the policy; yet it is nevertheless true that the contract must be construed as a whole and be given a construction if it can reasonably be done from the terms used and from the instrument as a whole that will give effect to the manifest intention of the parties.

Same—"Immediate Written Notice"—Definition:

Where the employer's liability policy required "immediate written notice" of "accident" to insurer, there could be no recovery where notice was not given until 17 months after the accident, notwithstanding it was given at the time of service of citation in employee's action for damages; such notice provision requiring reasonable early notice after the accident and not after the action for injuries had been instituted.

Same—Same—Statute:

Texas statute providing that stipulations in contracts requiring notice to be given of any claim for damages shall be void unless reasonable and that any stipulation fixing the time at a lesser period than 90 days shall be void is restrictive and in derogation of the common law rights to freely contract and therefore is to be strictly construed.

Same—Same—Knowledge of Employee Imputed to Employer:

Where insured employer failed to give insurer "immediate written notice" of accident to employee as required by the policy there could be no recovery, regardless of whether the employer had actual notice of the accident or his authorized employee had actual knowledge thereof, such knowledge being imputed to employer.

[Judgment for plaintiffs below. Here reversed in favor of company.]

Travelers' Ins. Co. of Hartford, Conn. v. Scott et al.
(Tex. C. C. A.):

218 Southwestern Reporter (March 17, 1920) 53.

Automobile Insurance—Loss—Evidence:

In an action on an automobile policy insuring automobile against sinking in conveyance by water, where the ferry boat on which automobile was being conveyed submerged, losing the automobile, insurer was liable under the clause of the policy against sinking, although the barge rose again to the surface of the water.

Action on Policy—Same—Defense:

The defense of unseaworthiness of the ferry on which the automobile insured against sinking in conveyance by water,

was being conveyed, was not applicable to the insurance contract in view of the nature of the risk.

Same—Same—Verdict:

In an action on a policy insuring an automobile against sinking in conveyance by water where the automobile sunk with a ferry into salt water, the evidence as to damages was sufficient to sustain a verdict of \$1,300 in favor of insured.

[Judgment for plaintiff below. Here affirmed against company.]

American Automobile Ins. Co. v. Fox (Tex. C. C. A.):

218 Southwestern Reporter (March 17, 1920) 92.

Principal and Surety—Contract—Construction:

In determining the rights of surety under an application for surety bond, the intentions of the parties to the contract governs.

Same—Same—Same:

In construing contracts and written instruments special terms will control general terms.

Same—Collateral—Application on Other Liability:

Surety company could not apply collateral received on application for one bond to other liability.

Contract—Ambiguity—Construction:

In event of ambiguity in an application on which surety company issued a bond, such application is to be most strongly construed against the company which drew the contract.

[Judgment in accordance with opinion.]

Southern Surety Co. v. Town of Greeneville, et al. (U. S. C. C. A.):

261 Federal Reporter (March 18, 1920) 929.

Action on Policy—Application—Defense:

Where the application attached to certificate issued by mutual insurance association did not state the amount recoverable on each animal insured and therefore was not a true copy of the application as required by Ia. Code No. 1741, the insurer in an action on the policy was precluded from pleading or proving the application or any part thereof as a basis for any defense it might interpose.

Mutual Company—By-Laws—Validity:

The by-law of a mutual insurance association requiring owner of animal insured against loss by lightning to have it examined by two disinterested parties for marks of lightning and report their sworn statements to association, where the carcass of the animal was disposed of before association's adjuster can view it, is void under Sec. 1742 and Code Supplement 1913, Sec. 1742 a, relating to proofs of loss to be furnished by insured.

Same—Agency—Evidence:

In an action on a certificate of insurance, insurer's

agent was competent to testify that he was agent of insurer at the time the certificate was issued.

Same—Loss—Evidence:

In an action on a certificate of insurance, insuring animals against loss by lightning, a witness who had been engaged in the business of butcher for 12 years and who had occasionally bought hides of horses and cattle struck by lightning, was qualified to express an opinion that a spot on the hide of insured cow, claimed to have been struck by lightning, had in fact been so caused.

Same—Cause of Death—Question for Jury:

In an action on a certificate insuring animals against loss by lightning, the question of whether the death of insured's stock alleged to have been killed by lightning was in fact due to lightning was for the jury.

[Judgment for plaintiff below. Here affirmed against association.]

Lyons v. Farm Property Mut. Ins. Assn. of Ia. (Ia. S. C.):

176 Northwestern Reporter (March 19, 1920) 291.

Indemnity Insurance—Policy—Construction:

The plaintiffs carried on the business, amongst others, of acting as custodians of securities deposited with them by customers. They were insured under a policy underwritten by the defendants for a period of twelve months from September 30, 1916, against all losses which they might, during the twelve months, discover that they had sustained at any time since September, 1909: 1. "By reason of any bonds, debentures, scrip, certificates, warrants * * * or other similar securities * * * the custody of which they have undertaken, and which now are or are by them supposed or believed to be * * * in or upon their premises * * * being while so in or upon such premises * * * made away with by * * * theft * * * embezzlement, burglary or abstraction * * * whether by the officers, clerks and servants of the assured or any other persons." 2. "By reason of any securities of the description above specified being * * * stolen, misappropriated or made away with by * * * fraud of their officers, clerks and servants * * * whilst in transit * * * between any houses or places within 100 miles from Philadelphia," where their business premises were situated. In May, 1917, during the currency of the policy the plaintiffs discovered that W, one of their servants, had between September, 1909, and September 23, 1916, fraudulently made away with large quantities of securities deposited with them by customers. Securities deposited with the plaintiffs were kept in strong rooms or "vaults" in the custody of an officer called the vault clerk. Customers desiring to withdraw securities frequently went to the plaintiffs' premises themselves or sent a person on their behalf and the securities were taken from the vault to the customers' reception room and handed over to them there. W obtained possession of the securities in question from the vault clerk by fraudulently pretending that he was

authorized to receive them on behalf of their owners, and having forged the owners' receipts for them and delivered those receipts to the plaintiffs he misappropriated the securities to his use. There was no evidence that the vault clerk when handing the securities to W did not suppose that they were to be taken and delivered to the owners in the reception room; *Held*, (1) That in the sentence in clause 1 of the policy, "by them supposed or believed to be" the words "by them" were to be read with "believe" as well as "supposed"; that it was not sufficient to bring a loss within that clause that the securities were believed by the customers to be on the premises at the date of the policy; and that consequently, as the plaintiffs knew that the securities had been withdrawn before that date, clause 1 did not apply. (2) That a transit between the vault and the customers' reception room was not a transit between two places within the meaning of clause 2; and that the defendant was not liable on the policy.

[Judgment in accordance with opinion.]

Pennsylvania Company for Insurance on Lives and Granting Annuities v. Mumford (K. B. Div.):

[1920] 1 K. B. The Law Reports (March) 314.

Action on Policy—Proof of Loss—Waiver:

Where a policy against theft issued on an automobile conditionally sold in favor of seller and buyer as their interest might appear, required written notice of loss within 60 days, etc., and after a loss no such requirement was fulfilled, payment by insurer to the conditional seller was a mere gratuity and in an action by the purchaser's administrator, it was *Held*, That such mere gratuity did not operate as a waiver of defense of no proof of loss as against such purchaser.

[Judgment for company below. Here affirmed in favor of company.]

Navickis v. Fireman's Fund Assn. (Mass. S. C.):

126 Northeastern Reporter (March 30, 1920) 388.

Surety's Indemnity—Notice—Liability of Indemnitor:

An indemnitor on a bond to indemnify a surety against loss by reason of the principal's default on the principal's bond is entitled to notice of the execution of the principal's bond by the surety, otherwise the surety cannot hold indemnitor liable for the surety's loss resulting from default by the principal.

[Judgment in accordance with opinion.]

American Surety Company v. Lyons et al. (C. P., Luzerne Co., Pa.):

77 Legal Intelligencer (April 2, 1920) 253.

Burglary Insurance—Policy—Joint and Several Property:

Where a burglary theft or larceny policy named several persons living in the same dwelling as the assured though not forming a joint policy, it was *Held*, to cover the several property as well as the joint property of such persons.

Same—Action on Policy—Parties:

The owner of property covered by a theft policy could re-

cover in an action on the policy, though others named as assured were not joined as plaintiffs in such action.

[Judgment for plaintiff below. Here affirmed against company.]

Emery v. Ocean Acc. Guarantee Corp. (Mich. S. C.):

176 Northwestern Reporter (April 2, 1920) 566.

Indemnity Insurance—Refusal of Insurer to Defend:

Where the contract of indemnity permitted but did not require the insurer to defend suits brought against the assured, the refusal of insurer to defend a suit for the stated reason that it was not liable for any recovery therein did not waive the right to question the fact of insured's liability and the reasonableness of a settlement made by him.

Same—Same—Settlement by Insured:

Where the contract permitted but did not require insurer to defend actions against insured, a compromise judgment in such action entered by consent of insured is not presumptive evidence against insurer either as to the fact of insured's liability or as to the reasonableness of the settlement.

Same—Settlement—Recovery:

Insured under a contract of indemnity is not bound to wait until judgment is rendered against him, but can recover by showing that he was legally liable and that the amount of the settlement made by him was reasonable.

[Judgment for plaintiff below. Here reversed in favor of company.]

Brinkman v. Western Automobile Indemnity Assn. (Mo. C. A.):

218 Southwestern Reporter (April 7, 1920) 944.

Policy—Cancellation—Notice:

Where the policy gave insurer the right to cancel on the return of unearned premium, but provided that the protection should continue five days from the receipt of the notice of cancellation, the notice that on a specified date the policy would be canceled and the company's liability would cease is not a cancellation of the policy.

Same—Same—Same:

When insurer gave notice that on a certain date it would cancel the policy and insured accepted the notice as a cancellation, retaining the unearned premium returned to him he was bound by such acceptance.

Same—Same—Time:

Where the policy provided that protection should continue for five days after notice of cancellation, in computing the time, the first day is excluded and the last day included and the loss occurring on the 5th day before midnight is covered.

Same—Same—Same:

Provision in a policy stipulating that the term of 5 days protection after notice of cancellation shall begin and end at noon on the dates specified does not affect the general rule for computation of time, extending the termination to midnight.

Same—Ambiguity—Construction:

Where the clause fixing the period of protection after notice of cancellation is not clear it will be most strongly construed against the insurer.

[Judgment for plaintiff below. Here affirmed against company.]

Malin v. Netherlands Ins. Co. (Mo. C. A.):

219 Southwestern Reporter (April 14, 1920) 143.

Employers' Liability—Oral Contract—Validity:

An oral contract of insurance containing all the elements essential to a contract is valid in the state of Kentucky.

Same—Same—Authority of Agent:

It is within the apparent scope of the authority of an agent with power to solicit insurance, deliver policy and collect the premiums, to make an oral contract and his act in so doing is binding on the company unless the insured knew of the limitations of his power.

Policy—Mistake—Reformation:

An insurance policy may be reformed the same as other written instruments if by reason of mutual mistake, or mistake on one side and fraud on the other, it does not conform to the real agreement.

Mistake—Retention of Policy—Estoppel:

Where it was agreed that a casualty contract should cover the operations of a logging train as well as other operations around a saw-mill, the acceptance and retention of a policy by insured upon the assurance by the agent who delivered the policy that it covered logging trains did not preclude insured from claiming that the insertion in the contract of the words "no exceptions" opposite a statement in the schedule "the assured does not operate a railroad switch or side track in connection with the word described in the schedule except as follows" was a mistake; the risk described in the application, as well as in the policy being "transportation of logs to mill" and "operation of tramways."

[Judgment for plaintiff below. Here affirmed against company.]

Georgia Casualty Co. v. Bond-Foley Lumber Co. (Ky. C. A.):

219 Southwestern Reporter (April 21, 1920) 442.

Automobile Insurance—Policy—"Object":

Where an automobile insurance policy covered damages to an automobile by being "in collision with any other automobile, vehicle or object * * * excluding damages caused by striking any portion of the road bed, it was *Held*, That the word "object" does not mean some object similar to an automobile or vehicle, and includes an embankment beyond the traveled portion of the road bed.

Same—Same—"Road Bed":

Where a policy of automobile insurance excepted damages

caused by striking the "road bed," it was *Held*, That the term road bed does not include an embankment.

[Judgment for plaintiff below. Here reversed in favor of company.]

Rouse v. St. Paul Fire & Marine Ins. Co. (Mo. C. A.):

219 Southwestern Reporter (April 28, 1920) 688.

Theft Policy—"Always Occupied"—Construction:

By a policy of insurance the contents of premises used for business and residential purposes by the assured and his wife were insured against loss by housebreaking or theft. The policy contained a clause: "Warranted that the said premises are always occupied." During a temporary absence of some hours of the assured and his wife on a Sunday the premises were left unattended and were broken into and some of the contents were stolen. In an action on the policy, *Held*, That the warranty did not mean that the premises should at no time be left unattended but that they should be continuously occupied as a residence; that there had in the circumstances been no breach of the warranty, and that the assured was therefore entitled to recover the loss on the policy.

[Judgment for plaintiff.]

Simmonds v. Cockell (K. B. Div.):

(1920) 1 K. B. The Law Reports (May) 848.

Title Insurance—Foreign Risk—Statutory Deposits:

A Washington title insurance company may write title insurance in the state covering property situated outside the state, but such foreign policyholder must look only to the general assets for satisfaction of claims, as statutory deposits within the state of Washington are for the satisfaction only of claims of holders of policies on property within the state.

[Judgment in accordance with opinion.]

Northwestern Title Ins. Co. v. Fishback, State Ins. Com'r (Wash. S. C.):

188 Pacific Reporter (May, 1920) 469.

Liability Insurance—Policy—Computation of Premium:

Where a liability insurance policy issued to a railway and electric light company covered everything except the operation of a street railway and the railway power lines, the insurer was entitled to have the pay roll of insured's power plant included in computing the premium which was based on the pay roll.

Policy—"Operation"—Construction:

A provision of the policy of liability insurance describing the work covered by the policy as the operation, maintenance and extension of lines and the making of service connection, the word "operation" was not employed as a mere caption or heading, but was itself one of the things intended to be insured.

Policy—Contract—Presumption:

An insurance policy properly executed when offered by in-

suror and accepted by insured will be conclusively presumed to contain all the terms of the agreement for insurance by which the parties intend to be bound.

Policy—Ambiguity—Construction:

Where there is any ambiguity in the language of the policy of insurance, insured is entitled to a favorable interpretation thereof.

[Judgment in accordance with opinion.]

Ocean Accident & Guarantee Corporation v. Piedmont Ry. & Electric Co. (N. C. S. C.):

102 Southeastern Reporter (May 1, 1920) 636.

Live Stock Policy—Forfeiture—Suspension:

Provision in a live stock insurance policy that a change of the home of the animal voids the policy does not invalidate the policy unless it is declared forfeited while the prohibited condition exists and before the loss occurs. It only suspends its operation during the time the policy is being violated.

Action on Policy—Knowledge of Agent Imputed to Company:

Where a certain condition exists when the animal was insured and the agent of the company knew this fact, the policy is issued with knowledge and no further notice by the owner is necessary.

[Judgment in accordance with opinion.]

Timberlake v. Granite Live Stock Ins. Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (May, 1920) 11.

Action on Bond—Successor to Surety—Parties:

Where a surety company took over the business of another surety company, assumed all its obligations, etc., with stated intention that successor company would take the place of the old company, by agreeing to repay to the old company, it was *Held*, That an administrator of an estate might sue the successor company direct on an assumed bond of a defaulting executrix, regardless of whether the contract is one of strict reinsurance since such contract must be construed in light of all its provisions.

[Judgment for company below. Here reversed against company.]

People ex rel. Kane v. National Surety Co. (Col. S. C.):

188 Pacific Reporter (May 3, 1920) 653.

Indemnity Insurance—Subrogation—Accident:

Where the insurer agreed to indemnify the purchaser of an elevator to the extent of \$5,000.00 for any loss imposed upon it by law for damages, etc., to defend suits and pay expenses, and a recovery was had against such purchaser on account of the fall of the elevator, the insurer was subrogated to the purchaser's rights to the extent of the costs and the amount of the indemnity but was not entitled to attorney's fees or expenses of the trial for purchaser did not incur any such costs; subrogated indemnity insurer was entitled to recover costs of appeal.

[Judgment in accordance with opinion.]

John Wanamaker, New York, Inc., et al. v. Otis Elevator Co. (N. Y. C. A.):

126 Northeastern Reporter (May 4, 1920) 718.

Injunction Bond—Time in Force—Premium:

Where an injunction bond provided for payment of premiums to surety until "expiration without appeal or proceedings to review of the time to appeal from or reject any adjudication or termination direct or indirectly fixing or discharging such liability" the bond was in force until termination of proceedings to review whether by error or appeal, and payment of premium was required until such time.

[Judgment for defendant below. Here reversed in favor of company.]

American Surety Co. of New York v. Cresson Consol. Gold Min. & Mill. Co. (Col. S. C.):

188 Pacific Reporter (May 10, 1920) 724.

Action on Policy—False Statement—Question for Jury:

In an action on a policy insuring a registered Belgian stallion, defend on the ground of false representation by insured that the horse had never had colic, the question of the falsity of the representation was for the jury.

[Judgment for plaintiff below. Here affirmed against company.]

Fekjar v. Iowa State Live Stock Ins. Co. (N. D. S. C.):

177 Northwestern Reporter (May 28, 1920) 455.

Surety Bond—Condition Precedent—Recovery:

The liability of a surety on a bond for the faithful performance of a building contract is in the nature of a liability on an insurance contract and is to be liberally construed in favor of the insured, but where a condition precedent to recover on the bond clearly has not been complied with, the obligee may not recover.

[Judgment in accordance with opinion.]

Forsythe Bros. Co. v. The Bankers Surety Co. (Ill App.):

15 Illinois Law Review, Appellate Court Digest (June, 1920).

Annotation: Automobile Liability Insurance:

Under the above heading appears an annotation to the case of Fullerton v. United States Casualty Company, heretofore reported in 31 Insurance Digest 371; 6 American Law Reports 367.

Annotation: Right of Trustee in Bankruptcy or Assignee for Creditors under Indemnity Policy:

Under the above heading appears an annotation to the case of North American Accident Insurance Company v. Newton, reported 57 Canada S. C. 577; 6 American Law Reports 1236; and Schambs v. Fidelity & Casualty Company of New York, reported 259 Federal Reporter 55; 6 American Law Reports 1231.

Action on Policy—Contract—Construction:

All provisions which have for their aim the defeat of the object of the contract, namely, indemnity, are strictly construed against the insurer.

Same—Burglary—Presumption:

Where, in burglary insurance the insured can show a logical inference that the insured article was stolen, this inference will support a finding by the jury in favor of the insured.

[Judgment in accordance with opinion.]

Zeck v. New Jersey Fidelity & Plate Glass Ins. Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (June, 1920) 43.

Action on Indemnity Bond—Contract—Construction:

A bond issued to indemnify an employer against loss from dishonesty of employe is an insurance contract and should be liberally construed.

[Judgment in accordance with opinion.]

Auto Truck Steel Body Co. v. Chicago Bonding & Ins. Co. (Ill. App.):

15 Illinois Law Review, Appellate Court Digest (June 1920) 44.

Workmen's Compensation—Policy—Computation of Premium:

Where a policy of workmen's compensation insurance is cancelled in less than the year it had to run, premiums up to the date of cancellation should be computed on the basis of remuneration paid by the employer up to the time of cancellation.

[Judgment for company below. Here affirmed in favor of company.]

Joseph Weaver & Son v. Home Life & Accident Co. (Tex. C. C. A.):

221 Southwestern Reporter (June 16, 1920) 299.

Action for Damages—Breach of Contract—Pleading:

The complaint alleging that insurance solicitor agreed in his individual capacity to immediately forward plaintiff's application to home office of insurance company for policy of hail insurance, and that solely because of his failure and neglect to forward such application plaintiff's crop had not been insured at the time of its destruction, stated a good cause of action against the solicitor.

Same—Agent's Failure to Forward Application—Liability of Company:

Soliciting agent's failure to promptly forward farmer's application for hail insurance to the home office of his company acted in his individual capacity and not as agent for the company and upon breach by the agent of his agreement with the farmer by so failing to forward the application, the agent personally and not the company was liable for damages.

Same—Same—Measure of Recovery:

Agent failing to forward application for hail insurance as agreed is liable to the same extent as that liability which would have fallen on the insurance company had the insurance been effected as contemplated, and the rule relating to

the damages for the destruction of or injury to growing crops is not applicable.

[Judgment against agent.]

Mayhew v. Glazier et al. (Col. S. C.):

189 Pacific Reporter (June 21, 1920) 843.

Burglary Insurance—Policy—Coverage:

Policy against burglary from a safe after use of tools and explosives directly thereon, which provided for an indemnity for money extracted from the inner safe of so-called burglar-proof chest by tools or explosives, covers a loss for money taken from the cash drawer of the safe after the inner door of the safe and the door protecting the cash drawer had been forced by tools although the outer door of the safe was either opened by knowledge of the combination or had not been locked.

Same—Same—Construction:

An insurance contract which is prepared by the insurer must be construed most favorably to the insured.

[Judgment for company below. Here reversed against company.]

Rosenbach v. National Fidelity Casualty Co. (St. Louis C. A., Mo.):

221 Southwestern Reporter (June 23, 1920) 386.

Action on Burglary Policy—Change of Risk—Evidence:

Where a policy against burglary provided that it should become void "if the condition or circumstances of the risk are changed without a written consent of company" the policy would not become void upon removal of iron shutters from insured premises by insured's landlord under the order of public authorities, nor was insured required to give notice of such removal.

[Judgment for plaintiffs below. Here affirmed against company.]

Zivitz v. Maryland Casualty Co. (N. Y., App. Div.):

182 New York Supplement (June 28, 1920) 321.

Indemnity Insurance—Payment of Judgment—Subrogation:

An indemnity insurer's right of subrogation under the terms of the policy against a third party responsible for the injury is not dependent upon the payment of a judgment by insured from its own funds and where the insurer paid the judgment it was entitled to be subrogated, irrespective of insured's solvency.

Same—Insolvency of Insured—Effect:

The liability of indemnity insurer is not dependent upon the financial condition of insured.

[Judgment in accordance with opinion.]

Employers' Liability Assur. Corp. v. International Milk Products Co. (N. Y., App. Div.):

182 New York Supplement (June 28, 1920) 337.

Fidelity Bond Is "Contract or Policy of Insurance"—Definition:

A contract guaranteeing or indemnifying an employer against any breach of fidelity on the part of an employee is a "contract or policy of insurance," under New York insurance laws, although it is designated a bond.

Same—Construction:

Under a fidelity bond insuring employer against a breach of fidelity on part of employee and requiring a claim to be presented to insurer within six months after the "date of the termination of the surety's liability," the claim was required to be presented after termination of the time for which the premium was paid, the "date of termination of surety's liability" not being the date when limitation had fully run against an action as "liability" was not used as meaning a fixed and absolute obligation to make good a defalcation but as meaning the condition of being exposed to the upspringing of an obligation to discharge or make good an undertaking of another or a loss or deficit or the being exposed or subject to a given contingency risk or casualty which is more or less probable.

[Judgment for plaintiff below. Here reversed in favor of company.]

First National Bank of East Islip v. National Surety Company (N. Y. C. A.):

127 Northeastern Reporter (June 29, 1920) 479.

Workmen's Compensation—Contract—Meeting of Minds:

Where an employee of labor applied to a local agent of an indemnity insurance company for a renewal of an expiring policy covering liability for injury to employees stated that he desired the insurance even though the premium might be more than \$15.00 and the local agent in the application sent to the general agent inserted the premium as \$10.00, the amount of the premium the preceeding year, and the general agent wrote employer that a \$15.00 premium was required and employer should advise by return mail if such premium would be satisfactory, there was no contract of insurance until the employer accepted the counter offer of the general agent, there being no meeting of minds.

[Judgment in accordance with opinion.]

Western Indemnity Co. v. Industrial Accident Commission (Cal. S. C.):

190 Pacific Reporter (July 5, 1920) 27.

Policy—Renewal—Presumption:

The renewal of a fire policy is impliedly made on the basis that the statements in the original proposal are still accurate.

Same—Measure of Recovery:

On November 8, 1915, a motor car was insured for its full value on a proposal stating the present value at 250 pounds. The policy was renewed in November, 1916, 1917 and 1918, and the car was destroyed by fire on June 17, 1919, at which date the arbitrator found it was worth 400

pounds and stated a special case for the Court to determine the insurer's liability. The policy insured "against damage ***** not exceeding the full value of the car." *Held*, That if the increase in value had wholly accrued since the date of the last renewal, the insured was entitled to recover 400 pounds, but if it had partly accrued before that date he could only recover 250 pounds, and the case must accordingly go back to the arbitrator with this intimation.

[Judgment in accordance with opinion.]

In re. Wilson & Scottish Insurance Corporation, Ltd.
(Ch. Div.):

[1920] 2 Chancery, The Law Reports (July 7, 1920)

28.

Burglary Policy—"Actual, Forcible and Violent Entry":

The policy covered "business premises only." The business premises consisted of a shop on the ground floor, a fitting room on the first floor and a trimming room in the basement. The upper floors were occupied by the insured as a residence. During the currency of the policy, a person entered the house in a normal way and concealed himself in a coal cellar in the basement. At night after the shop and trimming room had been locked up he entered the latter room by sliding back the catch of the lock with some instrument. He then went up stairs to the shop and violently broke into it. He left the house with the goods he had taken by the front door. *Held*, That the premises referred to in the policy meant those used by the insured for business purposes only, namely, the shop, the trimming room and the fitting room and that the thief having made an actual, forcible entry into the shop and removed goods therefrom the company was liable. Such an entry as was made into the trimming room was an actual, forcible and violent entry.

[Judgment against company.]

In re. an arbitration between Calf and The Sun Insurance Office (Eng. C. A.):

[1920] 2 K. B., The Law Reports (July 7, 1920) 266.

Principal and Surety—"Insurance"—Definitions:

Insurance is defined as a contract by which one party, in consideration of a price paid to him adequate to the risk, becomes security to the other against loss by certain specified risks. Its dominant and characteristic feature is to grant indemnity or security against loss for a consideration.

Same—Contract Construed—Waiver:

An undertaking guaranteeing the performance of a contract by a sub-contractor for a stated consideration by a company engaged in selling contracts of such character is to be construed an insurance contract so that a waiver of the conditions thereof need not be in writing, but may be established by parol proof.

[Judgment for defendant below. Here reversed against defendant.]

Everly v. Equitable Surety Co. (Ind. App.):

127 Northeastern Reporter (July 13, 1920) 616.

Pledge of Policy—Acceptance of New Note:

The act of a debtor in accepting another note would not invalidate the assignment of a policy securing payment of the original note, where the last note would evidently have impaired the security of the creditor and there was no surrender made of the policy.

Same—Effect of Suit on Original Debt:

The policy being still held by the estate of the assignee as collateral security for the debt, that suit was brought upon the note and judgment was satisfied in part did not have the effect of extinguishing the pledge of the policy.

[Judgment for defendant.]

Clark v. Downes (Me. S. J. C.):

110 Atlantic Reporter (July 15, 1920) 364.

Action for Damages for Failure to Insure—Evidence Considered:

This was an action for damages against a shipping agent for failure to insure plaintiff's goods as against war risks. It was plaintiff's version that the defendant was to do all customary things in connection with the shipment to fully protect the shipper. The defendant, a qualified expert, testified that after the armistice, shipping agents ceased to insure against war risks. His testimony was not denied. *Held*, That there could be no recovery.

[Judgment for plaintiff. Here reversed in favor of defendant.]

Lambert v. F. Wm. Gertzen Co. (N. Y., App. Tr.):

182 New York Supplement (July 19, 1920) 637.

Liability Policy—Accrual of Liability—Payment of Loss:

A condition of a casualty insurance policy was to the effect that the casualty company should not be liable for any loss under the policy until after a final judgment had been rendered in a suit against the insured for damages and the loss so adjudged had been paid in money. *Held*, That the provision is valid, and that there must be substantial compliance with it to mature a liability of the casualty company to the insured.

Same—Same—Same:

The insured gave its promissory notes to the judgment creditors, who thereupon accepted the same as payment and entered satisfaction of the judgments; but whether this constituted a substantial compliance with the provision as to payment is not determined, as the promissory notes, which were afterwards reduced to judgments against the insured, were actually paid in money by the insured, and it is *Held*, That such payments accomplished the purposes of the contract provision and amounted to a substantial compliance with the insurance contract.

Same—Limitation of Action—Validity:

A stipulation in an insurance contract that an action thereon can only be brought within ninety days after the

date of a judgment for the loss is repugnant to the provisions of section 17 of the Code, and is therefore invalid.

[Judgment for plaintiff below. Here affirmed against insurance company.]

Kansas Free Air Assn. v. Georgia Casualty Co. (Kan. S. C.):

190 Pacific Reporter (July 26, 1920) 592.

Policy—Risk—Burden of Proof:

The policy covered "all direct loss or damage by tornado, windstorm or cyclone" and expected "any loss or damage occasioned directly or indirectly by or through any * * * tidal wave, high water * * * overflow" and "any loss or damage caused by water or rain, whether driven by wind or not." *Held*, That the burden was on the plaintiffs to show that the loss was not one thus expressly excepted from the contract.

Same—Loss by Wind and Water—Liability of Company:

It having been stipulated that the loss resulted from "the combined action of wind and water" and that "it is impossible to determine to what extent each was an element or factor in causing it, there could be no recovery.

[Judgment for plaintiffs below. Reversed in part by C. C. A. (196 Southwestern Reporter 560.) Judgment of C. C. A. here affirmed.]

Coyle et al. v. Palatine Ins. Co., Ltd. (Tex. C. A.):

222 Southwestern Reporter (July 28, 1920) 973.

Action on Policy—Ownership—Question for Jury:

The ring in question had been given by insured to his fiancée. Upon breaking the engagement she pawned the ring and gave him the pawn ticket. He subsequently redeemed the ring. He agreed to return the ring to her upon the payment of a certain sum. This sum was never paid. *Held*, That under this evidence the question of ownership of the ring was properly submitted to the jury.

Same—Penalty—Demand:

There was no testimony that any demand for payment had been made, or, if made, what amount was demanded, nor was there anything in the record showing a refusal of the company to pay. *Held*, That under such circumstances there was no liability for the statutory penalty.

[Judgment for plaintiff below. Here affirmed upon remittitur of amount of penalty.]

Goldbaum v. Great Eastern Casualty Co. (St. Louis C. A.):

222 Southwestern Reporter (July 28, 1920) 868.

Action on Indemnity Policy—Contract—Construction:

The plaintiffs carried on the business of acting as custodian of securities deposited with them by customers for safe keeping. They were insured under a policy underwritten by the defendant for a period of twelve months from September 30, 1916, against all losses which they might during the twelve months, discover that they had sustained at any time

since September, 1909: 1. "By reason of any bonds, debentures, scrip, certificates, warrants * * * or other similar securities * * * the custody of which they have undertaken, and which now are or are by them supposed or believed to be * * * in or upon their premises * * * being while so in or upon such premises * * * made away with by * * * theft * * * embezzlement, burglary or abstraction * * * whether by the officers, clerks and servants of the assured or any other person." 2. "By reason of any securities of the description above specified being * * * stolen, misappropriated or made away with by * * * fraud of their officers, clerks or servants * * * whilst in transit * * * between any houses or places within 100 miles from Philadelphia" where their business premises were situate. In May, 1917, during the currency of the policy, the plaintiffs discovered that W, one of their servants, had, between September, 1909, and September 23, 1916, fraudulently made away with large quantities of securities deposited with them by customers. Securities deposited with the plaintiffs were kept in strong rooms or "vaults" in the custody of a vault clerk. Customers desiring to withdraw securities frequently went to the plaintiff's premises themselves, or sent a person on their behalf and the securities were taken from the vault to the customers' reception room and handed over to them there. W obtained possession of the securities in question from the vault clerk by fraudulently pretending that he was authorized to receive them on behalf of their owners and having forged the owners' receipts for them and delivered those receipts to the plaintiffs, he misappropriated the securities to his own use. There was no evidence that the vault clerk when handing the securities to W did not suppose that they were to be taken and delivered to the owners in the reception room: *Held*, (1) That in the sentence in clause 1 of the policy "by them supposed or believed to be," the words "by them" governed "believed" as well as "supposed"; that it was not sufficient to bring a loss within that clause, that the securities were believed by the customers to be on the premises at the date of the policy; and that consequently, as the plaintiffs knew that the securities had been withdrawn before that date, clause 1 did not apply. (2) That a "transit" between the vault and the customers' reception room was not a "transit between any houses or places" within the meaning of clause 2; a transit which was intramural only was not covered; and that the defendant was not liable on the policy.

[Judgment for company.]

Pennsylvania Company for Insurance on Lives and Granting Annuities v. Mumford (K. B. Div.):

(1920) 2 K. B., The Law Reports (August) 537.

Liability Policy—Scope of Liability—Statute Construed:

Chap. 1268, Public Laws R. I., is entitled "An Act in Amendment of and in addition to c 831 * * * Entitled 'An Act relative to payments to employees for personal injuries received in the course of their employment,'" etc. Art. 5 is entitled "Insurance against Liability to Pay Com-

pensation." Sec. 9 provides, "Every policy hereafter written insuring against liability for personal injury, other than payment of compensation under this act, shall contain provision to the effect that the insurer shall be directly liable to the injured party * * * All policies made for insurance against liability described in this section shall be deemed to be made subject to the provisions hereof, and all provisions of such policy inconsistent herewith shall be void." *Held*, That a policy issued to a contractor under such Act could not be construed as relating only to personal injuries sustained by employee; a policy so issued would inure to the benefit of a pedestrian injured through or by reason of the negligence of such contractor, and action for damages could be maintained against the insurer because of such injuries and even though no service of process was had as against the contractor.

[Defendant's exceptions sustained below. Here reversed against defendant.]

Dillan v. Mark et al. (R. I. S. C.):

110 Atlantic Reporter (August 19, 1920) 611.

Application—Completion of Contract—Statute:

Where applications for hail insurance are signed by the applicants upon a farm, and then sent by mail to the local agent without the notice or knowledge of the local agent as to the amount of the insurance, the specific crops or lands to be covered, Sec. 4902, Comp. Laws 1913, which provides that hail insurance shall take effect from and after 24 hours from the day and hour the application for such insurance has been taken, by the authorized local agent of the insurance company, does not apply.

Same—Same—Evidence Considered:

Where the local agent of a hail insurance company furnishes application blanks to one who has been assisting him in writing insurance, and instructs such party that he may sign the application blank on his farm and send it to him by mail, and where, pursuant thereto, such party signs an application blank and causes another, his brother-in-law, so to do, upon his farm, on July 19, 1918, at 8 p. m., and thereupon deposits the same in a rural mail box on July 20, 1918, without the notice or knowledge of the local agent as to the amount of the insurance, specific crops or lands to be covered, or the specific company to which such application is made, and where such application blanks so signed in the course of the mail are not received by the agent until July 22, 1918, during which time hail losses have been sustained upon the crops covered in the application, the minds of the parties never met upon the terms or conditions of any contract of insurance existing at the time when the hail losses were sustained.

[Judgment for company below. Here affirmed in favor of company.]

Anderson v. Westchester Fire Ins. Co. (N. D. S. C.):

178 Northwestern Reporter (August 20, 1920) 434.

Automobile Policy—Violation of Law—Insufficient Proof:

Although the insured was carrying a considerable quantity of intoxicating liquor in his automobile at the time of the collision out of which this claim arises, there being no evidence to show that he was illegally transporting the liquor for purposes of illegal sale, it could not be held that the automobile was being used in violation of law at the time.

Same—"For Business and Pleasure Purposes":

The policy covered loss by collision when the automobile was being used for "pleasure and business causes." *Held*, That the fact that the insured had a considerable quantity of liquor in his car at the time of the collision was not enough to show that he was using the car for other than the purposes covered by the policy.

[Judgment for plaintiff below. Here affirmed in favor of plaintiff.]

Cohen v. Chicago Bonding & Ins. Co. (Minn. S. C.):

178 Northwestern Reporter (August 20, 1920) 485.

Corporation—Stock Subscription—Validity:

The stock subscription providing for payment to be made "in money or securities satisfactory to the insurance department" was valid on its face.

[Judgment for subscribers below. Here reversed against subscribers.]

Mitchell v. Porter (Tex. Comm. App.):

223 Southwestern Reporter (August 25, 1920) 197.

Reinsurance Contract—Nature of Contract:

The general rule is that contracts of reinsurance are merely contracts of indemnity of the insurer and that there is no privity between the insured policyholder and the reinsuring company.

Same—Right of Assured to Sue Reinsurer:

The bond in this case was originally issued by the American Bonding Company. Subsequently it determined to abandon its business in Virginia and applied to the State Corporation Commission for leave to withdraw its assets. The statute of the State specifically required a reinsuring company to assume the risks of the retiring company. The American Surety Company became surety on the bond in lieu of the retiring company. *Held*, That while the contract between the two companies contained no appropriate language to indicate that it was anything more than a mere reinsuring contract, at the same time under the bond clause having invoked and received the advantages afforded by the Virginia statute, it will be presumed that they assumed the burdens thereby imposed. Consequently the reinsuring company was directly liable to the assured.

[Judgment in accordance with opinion.]

American Bonding Co. of Baltimore, Md., et al. v. American Surety Co. of New York et al. (Va. S. C. A.):

103 Southeastern Reporter (August 28, 1920) 599.

Burglary Policy—Notice:

The policy provided for immediate notice "by telegraph to the company***** or to the nearest agent of the company." *Held*, That where the insured gave notice to the agent, the fact that telegraphic notice was not sent to the company was immaterial.

Same—Theft—Question for Jury:

The jewelry was kept in a bag behind a picture in a room occupied by the insured's wife. The morning after the loss was discovered, a servant who had been in insured's service for only two weeks suddenly left, stating "I have to leave, I can't give you any reason." During the servant's sojourn at the house she entertained her friends during the absence of the assured and his family. These friends at times entered the apartment where the jewels were kept. *Held*, That under this evidence, it was a question for the jury as to whether or not they were stolen.

[Judgment for plaintiff below. Here affirmed against company.]

Miller v. New Amsterdam Casualty Co. (N. J. C. E. A.):
110 Atlantic Reporter (September 2, 1920) 810.

Indemnity Insurance—Liability of Attorney in Fact:

A policy of insurance signed in the name "New Jersey Indemnity Co., Attorney in Fact. E. M. Carroll, President" and providing that "subscribers to motor car underwriter the New Jersey Indemnity Exchange severally agree to indemnify" etc., is to be construed as a contract of insurance by the New Jersey Indemnity Company, acting not as agent for the subscribers but as an insurance company in which the subscribers were interested pretty much as stockholders liable to contribute a certain amount by way of subscription to the liabilities of the indemnity company from time to time. In such a case where the principals were not named, the attorney in fact was liable.

Business of Insurance—Rights of Individuals:

The insurance Act of New Jersey does not forbid individuals from transacting the business of insurance.

[Judgment for plaintiffs below. Here affirmed against defendant.]

Solomon et al. v. New Jersey Indemnity Co. (N. J. S. C.):
110 Atlantic Reporter (September 2, 1920) 813.

Policy—Correspondence—Contract:

Where letters were written by insurer as to what its policy against theft, robbery or pilferage should cover and such letters were relied on by insured, it was *Held*, That the letters became a part of the contract of insurance.

Same—"Steal"—Definition:

Where the insurer's agreement that its policy should cover theft of automobile by vendee in possession under conditional sale, it was *Held*, to include embezzlement or unlawful conversion by such a vendee. "Stealing" being a larger term

than robbery, and including unlawful appropriation of things which are not technically a subject of larceny.

Same—Proof of Loss—Waiver:

Where the insured notified insurer in writing of the loss or disappearance of an automobile, and within 60 days from the date of the loss, insurer denied liability on the ground that its policy did not cover embezzlement or wrongful conversion, the insurer waived proof of loss.

[Judgment for plaintiff below. Here affirmed against company.]

Buxton v. International Indemnity Company (Cal. D. C. A.):

191 Pacific Reporter (September 6, 1920) 84.

Employer's Liability Policy—Payment of Premiums—Lapse:

Where insured employer fraudulently antedated its check, in payment of premium, drawn after an accident to an employee, and such check was endorsed by insurer, the premiums due on the policy were not paid so as to prevent lapse.

[Directions to vacate findings and award as to Insurer.]

Employers' Mut. Ins. Co. v. Industrial Commission of Colorado (Col. S. C.):

191 Pacific Reporter (September 6, 1920) 112.

Liability Policy—Warranty—Continuing:

Where liability policy insured the owner of "10 more or less" horses against loss from liability for damages caused by the horses, the owner warranted that "no vicious horse is used so far as assured knows or is informed". It was *Held*, That the warranty was a continuing warranty and was applicable to horses which became vicious after the execution of the policy.

Same—Coverage:

Liability policy insuring owner of "10 more or less" horses from liability for damages on account of injury caused by horses, covered horses acquired subsequent to the execution of the policy, and did not apply merely to those held at the time of its execution.

Same—Warranty—Waiver:

Evidence considered, it was *Held*, That insurer did not waive warranty contained in policy that "no vicious horse is used so far as assured knows or is informed." by defending an action against insured.

Same—Same—Estoppel:

Evidence considered insurer was not estopped from denying liability on the ground of breach of warranty.

[Judgment for company below and reversed by Appellate Division. Appellate Division decision here reversed in favor of company.]

Joseph Gordon v. Massachusetts Bonding & Ins. Co. (N. Y. C. A.):

128 Northeastern Reporter (September 7, 1920) 204.

Broker—Breach of Contract—Recovery:

Where insurance broker acted as agent of both parties with their knowledge, he can recover commission if the deal goes through, or he can recover of the party to be insured for loss of the commission through the latter's violation of the contract preventing its consummation.

Same—Same—Action:

Action by broker for a breach of contract to take out insurance, performance of which would have entitled plaintiff to commission from the insurance company was not premature where defendant's refusal of performance was absolute and the benefit to be derived by plaintiff was not problematical, uncertain or contingent on anything to take place in the future.

Same—Same—Presumption:

In an action for a breach of contract to take out liability insurance the presumption is not that the power of cancellation embodied in the policy would have been exercised but to the contrary.

[Judgment for plaintiff below. Here affirmed in favor of agent.]

McGee v. Dunnigan (Kansas City C. A., Mo.):

223 Southwestern Reporter (September 15, 1920) 681.

Action for Damages—Neglect of Insurer—Recovery:

Where an indemnity insurer was negligent in conducting defense in an action brought by an injured employee of insured and injured employee recovered a judgment against insured employer for an amount in excess of that named in the indemnity policy, the insurance company was liable to the employee for the damages thus occasioned.

Same—Contributory Negligence—Evidence:

In an action by employer against his indemnity insurer for improperly defending a suit, it was *Held*, That the employer was not guilty of contributory negligence where he employed an attorney to assist in the defense of the suit who had no control over the litigation and who did only things which he was required to do.

[Judgment for plaintiff below. Here affirmed against company.]

Anderson v. Southern Surety Co. (Kan. S. C.):

191 Pacific Reporter (September 20, 1920) 583.

Action on Automobile Policy—Value of Property—Pleading:

In an action under an insurance policy for total loss of an automobile in a collision where the petition did not allege the value of the automobile, such issue was raised by an answer which averred that between the time the policy was issued and the date it was damaged, it had clearly depreciated in value and it was only of the reasonable actual of \$400.00 and insurer cannot be heard to complain that the petition did not properly plead such issue.

Same—Same—Evidence:

Persons who for some time had been engaged in automobile salvage and repair business were qualified to testify as experts on the question as to whether or not the damaged automobile in question could be repaired so as to operate properly as an automobile.

Same—Totally Destroyed—Evidence:

In an action under an insurance policy for total loss of an automobile damaged in a collision it was *Held*, That the evidence did not warrant the submission of the case to the jury upon the question of whether or not the automobile was totally destroyed, although several witnesses testified that it could not be repaired.

[Judgment for plaintiff below. Here reversed in favor of company.]

Wolff v. Hartford Fire Ins. Co. (St. Louis C. A., Mo.):

222 Southwestern Reporter (September 22, 1920) 810.

Action on Employer's Liability Policy—Judgment Record—Evidence:

In an action on employer's liability policy to recover from the insurer, a judgment in favor of employe against insured was admissible.

[Judgment for plaintiff. Here affirmed against company.]

American Paper Products Co. v. Aetna Life Ins. Co. (St. Louis C. A., Mo.):

223 Southwestern Reporter (September 22, 1920) 820.

Action on Burglary Policy—Inner Safe—Recovery:

Where a policy of burglary insurance insures generally against abstraction from safes, contains a special agreement excepting loss of money from combination fire and burglar proof safe, containing inner steel burglar proof chest unless the same has been abstracted from the chest after entry has been effected by tools or explosives directly applied thereon, there can be no recovery for theft from a combination safe, where only the outer safe was opened by explosives and tools and the burglar proof chest was not opened.

[Judgment in accordance with opinion.]

Feinstein v. Massachusetts Bonding and Ins. Co. (S. C., New York Co., N. Y.):

183 New York Supplement (October 4, 1920) 785.

Action on Fidelity Bond—Contract—Waiver:

There was no implied waiver by a fidelity insurer of the provision of bank employe's bond requiring disclosure of loss during continuance of suretyship or within specified period after termination thereof and notice to surety within specified period after discovery, by requesting proofs of loss and furnishing blanks therefor on discovery of loss subsequent to expiration of specified period following termina-

tion of suretyship where such action by the insurer did not cause the bank expense or inconvenience.

[Judgment for company below. Here affirmed in favor of company.]

Bankers Trust Company v. American Surety Co. (Wash. S. C.):

191 Pacific Reporter (October 4, 1920) 845.

Automobile Policy—Appraisalment—Right to Sue:

The covenant in a policy of automobile insurance that any disagreement as to the amount of the loss shall be referred to appraisers to be selected by the parties is revocable and the insured may bring action at law on the policy without taking any steps to have a dispute between himself and the company as to the amount of the loss referred to the appraisers.

Same—Destruction by Fire—Option to Repairs:

Where a policy of automobile insurance provides that the company shall have the option to repair, rebuild, or replace the car, if damaged by fire, by giving notice of its desire to exercise such option within thirty days after the receipt by it of the sworn statement of loss, the company cannot after the expiration of the time, insist upon its right to rebuild or replace the car.

[Judgment in accordance with opinion.]

Gross v. Germania Fire Ins. Co. (Common Pleas, Berks Co., Pa.):

77 Legal Intelligencer (October 8, 1920) 742.

Policy—Ambiguity—Construction:

In case of any doubt or ambiguity in an insurance policy, it will be resolved in favor of insured.

Liability Insurance—Sub-Contractor—Liability:

Under provision of liability policy issued to firm of engineers, insurer was liable to a traction company for whom such firm of engineers were working, for the amount paid to an injured servant of a sub-contractor, if it could be said his injuries were caused by the performance of the work undertaken by the firm of engineers.

Same—Vexatious Delay—Statute:

Statute penalizing vexatious delay of payment does not apply to indemnity insurance contract against liability to another as distinguished from life, health or accident insurance.

[Judgment for plaintiff below. Here affirmed against company.]

Ocean Accident & Guarantee Corp. v. Northern Texas Traction Co. (Tex. C. C. A.):

224 Southwestern Reporter (October 13, 1920) 212.

Action on Automobile Policy—Risk—Liability:

Where a policy insured plaintiff against liability for loss imposed on him by law by reason of the ownership, main-

tenance, or use of his automobile, a loss sustained by plaintiff as a partner in a firm against which judgment was recovered for damages caused by the automobile while being driven in the firm business is covered if plaintiff was legally liable for any portion of such loss.

Same—Same—Measure of Recovery:

Where a judgment was recovered against a partnership for damages caused by one of the partners automobile while being used in the firm's business and such judgment was paid by the partnership, insured partner can recover from insurance company only the amount of the loss he was compelled to contribute to the firm.

Same—Payment—Subrogation:

An insurance company paying a partners' share of automobile liability is subrogated to rights against the driver of the automobile.

Same—Payment—Subrogation:

An insurance company paying a partner's share of automobile liability is subrogated to the partner's right to recover against the driver of the automobile.

[Judgment in accordance with opinion.]

Steinfeld v. Mass. Bonding & Ins. Co. (N. H. S. C.):

111 Atlantic Reporter (October 28, 1920) 303.

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[See Payment; Release; Settlement.]

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